

STATE V. MARK ANTHONY SOLIZ MARCH 13, 2012

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1 REPORTER'S RECORD

2 VOLUME 49 OF 75 VOLUMES

3 TRIAL COURT CAUSE NO. F45059

4 COURT OF CRIMINAL APPEALS NO. AP-76,768

5 STATE OF TEXAS) IN THE DISTRICT COURT

6 VS.) JOHNSON COUNTY, TEXAS

7 MARK ANTHONY SOLIZ) 413TH JUDICIAL DISTRICT

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10 JURY TRIAL

11 PUNISHMENT PHASE

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17 On the 13th day of March, 2012, the following

18 proceedings came on to be heard in the above-entitled and

19 numbered cause before the Honorable William C. Bosworth,

20 Jr., Judge presiding, held in Cleburne, Johnson County,

21 Texas:

22 Proceedings reported by Machine Shorthand and

23 Computer-Aided Transcription.

24

25 ORIGINAL

STATE V. MARK ANTHONY SOLIZ. MARCH 13, 2012

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3 PUNISHMENT PHASE

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1 PROCEEDING
 2 (Open court, Defendant present;
 3 Jury not present.)
 4 THE COURT: State ready to proceed?
 5 MS. JACK: State's ready, Your Honor.
 6 THE COURT: Defense ready?
 7 MR. HEISKELL: Yes, Your Honor.
 8 THE COURT: Defendant is present.
 9 MR. HEISKELL: Yes.
 10 (Pause in proceeding.)
 11 THE COURT: Okay. You can bring in the
 12 Jury.
 13 (Jury present.)
 14 THE COURT: Thank you. You may be seated.
 15 MS. JACK: We call Kenny Dodgin, Your Honor.
 16 THE COURT: Please raise your right hand.
 17 (Witness sworn.)
 18 MS. JACK: May I proceed?
 19 THE COURT: Yes, ma'am.
 20 MS. JACK: Thank you, Your Honor.
 21 KENNY DODGIN,
 22 Having been first duly sworn, testified as follows:
 23 DIRECT EXAMINATION
 24 BY MS. JACK:
 25 Q. Mr. Dodgin, can you please tell the Jury your

1 full name.
 2 A. Kenneth Ray Dodgin.
 3 Q. And, Mr. Dodgin, are you here by yourself today
 4 or are you here with someone else?
 5 A. I'm here with my wife.
 6 Q. Where do you call home?
 7 A. Watauga, Texas.
 8 Q. So you live in Tarrant County?
 9 A. Uh-huh.
 10 Q. Do you have any children?
 11 A. Got five daughters.
 12 Q. All right. What are their ages?
 13 A. 20, 26, 28; the other two, late 30s. I don't
 14 know. There's too many to keep up with.
 15 Q. Okay. All right. And when you're not keeping
 16 up with your five daughters, do you work?
 17 A. Yes, I do.
 18 Q. Where do you work?
 19 A. I work for Lowe's.
 20 Q. All right. What do you do for Lowe's?
 21 A. I'm in deliveries.
 22 Q. All right. How long have you worked for Lowe's?
 23 A. Going on five years.
 24 Q. And when you say that you're in deliveries, what
 25 do you do in terms of deliveries?

5
 1 A. We deliver appliances, install them.
 2 Q. Okay. Which Lowe's do you work at?
 3 A. The one in Lake Worth.
 4 Q. All right. What street, what's the address of
 5 that Lowe's?
 6 A. I think it's 2300 Center Drive.
 7 Q. All right. And is it close to Quebec?
 8 A. It's -- Quebec runs right behind it.
 9 Q. Okay. And does your wife work there as well?
 10 A. She works for the Lowe's in Hurst.
 11 Q. All right. So you both are Lowe's employees?
 12 A. Uh-huh.
 13 Q. All right. Now, were you working on June 29th --
 14 A. Yes, ma'am.
 15 Q. -- of 2010?
 16 A. Yes, I was.
 17 Q. All right. Were you also working in the
 18 delivery section then?
 19 A. Yes, I was.
 20 Q. And can you tell the members of the Jury what
 21 shift you normally worked?
 22 A. Usually I'd get there about 7:00, but my boss
 23 had called me; his truck was broke down, so he had me
 24 come on in early.
 25 Q. All right. So when you were going in early,

6
 1 what time did that take you there?
 2 A. I got there in the parking lot probably about
 3 6:20, 6:25.
 4 Q. All right. And what time was your shift
 5 normally?
 6 A. 7.
 7 Q. Till when?
 8 A. Till 4.
 9 Q. All right. So you got there about 6:25. Do you
 10 remember seeing any other cars in the parking lot?
 11 A. Not out where I park, no.
 12 Q. And do you park in a different place or the same
 13 place every day?
 14 A. Same place.
 15 Q. Where generally do you park?
 16 A. At the Lumber end out at the very end of the
 17 parking lot. We got to park out at the end.
 18 MS. JACK: May I approach this witness,
 19 Your Honor?
 20 THE COURT: Yes, ma'am.
 21 Q. And can you tell the members of the Jury kind
 22 of what some of the other businesses are around that
 23 Lowe's?
 24 A. Well, right across the parking lot is a
 25 T-Mobile phone, and there's a Care Now. And then next

1 door to us is a 24 Hour Fitness and a -- like a Best
2 Buy or something next to it.

3 Q. All right. So is it a rather large kind of
4 parking area for all of those businesses?

5 A. It's one real big parking area.

6 Q. All right. Looking now at State's Exhibit 125,
7 and I'll tell you this has already been admitted into
8 evidence. Can you see this okay?

9 A. Yeah.

10 Q. All right. Now, can you show the Jury where the
11 24 Hour Fitness is?

12 A. It's right here.

13 Q. All right. And we see -- is this the Lumber
14 section back here?

15 A. Yes.

16 Q. All right. And does the Lowe's continue on in
17 this direction?

18 A. Uh-huh.

19 Q. All right. Can we see where you typically park
20 in State's Exhibit 125?

21 A. Well, it would be like three or four more of
22 these parking places back this way towards the Care Now
23 and all that.

24 Q. Okay. Does State's Exhibit 126 show the area
25 a little bit closer to where you generally park?

10 1 A. Usually right out in here.

2 Q. So right about here?

3 A. Uh-huh.

4 Q. All right. So you're about two car -- two
5 spaces away?

6 A. Well, probably more on this side of the rack,
7 out in here.

8 Q. When you say "the rack", are you talking about
9 the area where --

10 A. Yeah, the cart rack.

11 Q. -- the carts go in. Okay. And so you
12 generally park on this side, opposite side of the rack,
13 across from where we can see the pylons?

14 A. Uh-huh.

15 Q. All right. Is that yes?

16 A. Yes.

17 Q. Okay. She has to type down --

18 A. I'm sorry.

19 Q. That's okay. She just has to type down what we
20 both say. All right. Did you park there on June the
21 29th?

22 A. Yes, I did.

23 Q. Did you see any other cars in the parking lot?

24 A. There was no cars down at this end where I
25 parked at all.

1 Q. All right. So were you going to go there and
2 open up the Lowe's or the delivery section of the Lowe's?

3 A. No, they were already open.

4 Q. They were already open?

5 A. I was just getting there to get everything ready
6 to go.

7 Q. Okay. And getting ready to work an eight-hour
8 shift?

9 A. Uh-huh.

10 Q. Okay. Can you tell the members of the Jury what
11 happened?

12 A. Well, I pull in and I park. And I got my lunch
13 bag and I'm getting everything together. And all of a
14 sudden, I notice a car come up beside me about two spaces
15 over, and they're going real slow. And I looked, and the
16 passenger never looked at me, didn't do nothing. They
17 just rolled up about two spaces.

18 Q. I'm going to stop you right there. When you say
19 they rolled up about two spaces, can we see on State's
20 Exhibit 126 where they rolled up?

21 A. Rolled up probably right about out here.

22 Q. Okay. So kind of in front of or --

23 A. They were to the left of me. I was here and
24 they were to the left.

25 Q. So were they in between what we see as the two

10 1 pylons and the parking space you've already identified
2 for the Jury?

3 A. Uh-huh, yes.

4 Q. Okay. All right. So they pulled up about two
5 spaces away and on the opposite side, the same side as
6 the rack?

7 A. Uh-huh.

8 Q. And tell the Jury what happened.

9 A. Well, I grabbed my stuff and got out, shut the
10 door. And when I shut the door and turned around, I
11 noticed the driver exiting out his door. And so I was
12 watching him as I walked. And when I got around past his
13 car, I looked down. And he had his hand down, and I
14 could see a black bandanna or a dark bandanna hanging
15 down by his side. And I kept walking and...

16 Q. Did you hear him say anything?

17 A. I heard him say "sir" or "excuse me, sir", and I
18 was still staring at him. And about the time he said
19 that, he raised his hand, and I seen a gun. And
20 I...(crying)

21 Q. All right.

22 A. I just took off, and then he shot three times.

23 Q. What kind of car did you see pull up?

24 A. It was a teal Dodge Stratus.

25 MS. JACK: May I have a moment, Your Honor?

1 THE COURT: Yes, you may.

2 Q. Mr. Dodgin, does State's Exhibit 55 appear to be
3 the same car that you saw the gunman get out of on June
4 29th in the morning hours at Lowe's?

5 A. Yes.

6 Q. When you said that you saw the gun, where was
7 the gun?

8 A. It was -- when he pulled his hand up, it was
9 coming out from underneath the bandanna.

10 Q. So the bandanna was wrapped around it or over it
11 and the gun was -- the barrel was coming out?

12 A. Yeah.

13 Q. You could see the barrel. What you could see of
14 the gun, does it appear to be the same gun in State's
15 Exhibit 56?

16 A. It looks like it. I mean, all I seen was the
17 end of it.

18 Q. You didn't wait around to check it?

19 A. No.

20 Q. Okay. How close was he to you when you saw the
21 bandanna?

22 A. He was probably about -- I'd say 10 feet.

23 Q. Okay. And you were looking directly at him?

24 A. Uh-huh.

25 Q. How close was he to you when he raised the gun?

1 (Witness excused.)

2 MS. JACK: May we have a moment, Your
3 Honor? Or may I approach for just a moment?

4 (Pause in proceeding.)

5 MS. JACK: May I approach, Your Honor?

6 THE COURT: Yes, you may.

7 (At the bench.)

8 MS. JACK: We should have two witnesses here
9 at 9:30. I apologize to the Court, Judge.

10 THE COURT: Okay.

11 (In open court.)

12 THE COURT: Ladies and gentlemen, it will
13 be 15 or 20 minutes before the next witness is available,
14 so I will recess you into the jury room and call you back
15 at about 9:30.

16 (Recess taken from 9:15 to 9:28 a.m.)

17 (Jury not present.)

18 MS. JACK: Judge, we have a witness here.

19 THE COURT: State's ready to proceed. Is
20 Defense ready to proceed?

21 MR. HEISKELL: Yes, Your Honor.

22 THE COURT: Defendant is present. Is the
23 Jury ready?

24 THE BAILIFF: Yes, sir.

25 THE COURT: Please bring them in.

1 A. Probably, I don't know, 6, 7 feet, because he
2 was just, I mean, he was walking towards me as I was
3 walking off.

4 Q. I want you to tell me when to stop, and you tell
5 me how close he was to you.

6 A. There.

7 Q. So about this distance with his arm out in your
8 direction; gun level at you. What made you start
9 running?

10 A. It just didn't feel right. I mean, when I seen
11 him raise his arm, I knew. I mean, when he raised it up,
12 I hollered "no" as loud as I could, and I turned. And
13 that's when he shot three times.

14 Q. What were you thinking when you were running?

15 A. Not ever seeing...(crying)

16 Never seeing my kids or my family again, or
17 my little grandson that was born.

18 MS. JACK: Thank you. I believe I'll pass
19 the witness, Your Honor.

20 MR. HEISKELL: No questions, Your Honor.

21 THE COURT: May the witness be excused?

22 MS. JACK: Yes, Your Honor. We'd ask that
23 he be finally released.

24 MR. HEISKELL: Yes.

25 THE COURT: You may be excused.

1 (Jury present.)

2 THE COURT: Thank you. You may be seated.

3 (Witness sworn.)

4 THE COURT: Thank you.

5 MS. JACK: May I proceed, Your Honor?

6 THE COURT: Okay.

7 KENNETH RICHARD ROBERTSON,

8 Having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. JACK:

11 Q. Officer, would you please introduce yourself to
12 the ladies and gentlemen of the Jury.

13 A. My name is Kenneth Richard Robertson.

14 Q. All right. And can you tell them how you were
15 formerly employed.

16 A. I was a police officer with the City of Fort
17 Worth, Texas.

18 Q. For how many years?

19 A. 27 years, 8 days, and about 8 hours, but I
20 wasn't counting.

21 Q. Are you recently retired?

22 A. Yes, ma'am.

23 Q. Okay. Did you come back to testify in this
24 case?

25 A. Yes, ma'am.

1 Q. All right. Can you give the Jury an idea or an
2 overview of your career with the Fort Worth Police
3 Department.

4 A. I spent my first two years in Patrol working on
5 the north side. The next year and a half I spent in a
6 specialized undercover unit called Street Crimes. I
7 spent 19-and-a-half years working K-9 Search and Rescue,
8 which involved building searches, searching on the
9 ground, tracking human beings, as well as narcotic
10 interdiction. I worked with the DEA Task Force out at
11 D/FW. And then in 2006, I transferred to the Crime Scene
12 Search Unit where I spent the rest of my career.

13 Q. Can you tell the members of the Jury as a member
14 of the Crime Scene Unit what your responsibilities were,
15 what you did on a daily basis.

16 A. Our responsibilities were to go to any scene
17 where a crime had been committed, secure the scene to
18 prevent the evidence from being tampered with or in any
19 way obliterated, destroyed; locate evidence, properly
20 document its location and relevance to the crime through
21 diagramming and photography, and then collect it
22 properly, package it properly, submit it to the Property
23 Control Unit so that it could be later used in courtroom
24 testimony.

25 Q. Okay. And as a member of the Crime Scene Unit,

1 in one day. So that if at any time we feel like that
2 system has been violated, we can just change the whole
3 system.

4 Q. All right. So it's a secure area?

5 A. Yes, ma'am.

6 Q. Okay. Can you tell the members of the Jury
7 where you responded on June 29th of 2010, initially.

8 A. I was originally sent to John Peter Smith
9 Hospital to the ER area to take photographs and try to
10 collect any clothing from a victim.

11 Q. Okay. And was the victim's name Ruben Martinez?

12 A. Yes, ma'am, it was.

13 Q. What was the nature of your dispatch?

14 A. That there had been a shooting over on the north
15 side of town and that the detectives were en route to
16 that location, and that they wanted me to go to the
17 hospital and try to get photographs first before making
18 the scene.

19 Q. All right. Had the victim already been
20 transferred or transported from the crime scene location
21 to John Peter Smith Hospital?

22 A. Yes, ma'am. He was on his way, actually, and I
23 was on my way to work, so I had to go get my van and then
24 get to there, so we kind of passed. I got my van and
25 then met him there.

18 1 did you-all have your own area within the Fort Worth
2 Police Department?

3 A. Actually, we covered the entire city.

4 Q. Okay. And I didn't ask my question very well.

5 Did you have your own area where the detectives and the
6 other officers worked in the Crime Scene office?

7 A. Oh, yes, ma'am, we do.

8 Q. Okay. And did you also have an adjacent area
9 where items of evidence could dry or -- could dry before
10 you package them and submit them to the Property Control
11 area?

12 A. Yes, ma'am.

13 Q. All right. And is the Fort Worth Police
14 Department a separate building from where evidence is
15 stored?

16 A. Yes, ma'am.

17 Q. Okay. The area where you would allow items to
18 dry, for instance, is that a locked and secure area?

19 A. Yes, ma'am, it uses what's called a three-key
20 system and it also has an alarm. The three-key system --

21 Q. Go ahead.

22 A. -- was designed so that if one of us loses a
23 key, our supervisor can come in and turn -- put in his
24 key and re-key the door. And then we all have to be
25 issued a second key. And that can be done three times

1 Q. Was the victim in critical condition?

2 A. He was unresponsive and unconscious when I
3 arrived.

4 Q. When you got to the hospital, can you tell the
5 members of the Jury what you did.

6 A. When I arrived, they were actually moving him
7 from the trauma area, which is T-1, over to take him into
8 a CAT scan. So literally I got a couple of pictures of
9 an empty room as they were wheeling him down the hallway
10 where he had originally been placed. And then I followed
11 him into the CAT scan area and took additional
12 photographs as I could. He was wearing a C-collar at
13 the time, so I couldn't really get good pictures of his
14 neck, which appeared to be where the injury was from, but
15 I did get pictures off of the screen from the CAT scan.

16 Q. Okay. So the physicians and the medical team
17 that were trying to save his life were not going to wait
18 for you to take pictures?

19 A. Right. And I'm not going to interfere with
20 that.

21 MS. JACK: May I approach this witness,
22 Your Honor?

23 THE COURT: Yes, ma'am.

24 Q. Officer, I'm showing you what's been marked as
25 State's Exhibit 446. Do you recognize this picture?

1 A. Yes, ma'am. That's a photograph I took.

2 Q. Okay. And can you tell, for the purposes of the
3 record and the Jury, how many pictures you took of the
4 victim at John Peter Smith Hospital, if you have an idea.

5 A. I think it was only about 10 or 12.

6 Q. So 10 or 12 pictures of the victim Ruben
7 Martinez at John Peter Smith Hospital?

8 A. Right.

9 Q. And this is only one of those pictures; is that
10 correct?

11 A. Correct.

12 Q. All right. Does this fairly and accurately
13 depict Ruben Martinez on June 29th of 2010 at the time
14 that you saw him?

15 A. Yes, ma'am, it does.

16 MS. JACK: All right. Your Honor, at this
17 time, the State would offer State's Exhibit 446 into
18 evidence.

19 MR. HEISKELL: Your Honor, we do object
20 under Rule 403, cumulative, the prejudicial value
21 outweighing the probative value.

22 THE COURT: May I see the picture?

23 MS. JACK: Yes, Your Honor.

24 THE COURT: The objection is overruled.

25 446 is admitted.

1 (State's Exhibit No. 446 admitted.)

2 MS. JACK: May I publish to the Jury, Your
3 Honor?

4 THE COURT: Yes, ma'am.

5 Q. (BY MS. JACK) Do you know where in the hospital
6 Ruben was specifically when you took this picture?

7 A. He was in the CAT scan bedding area and they
8 were moving him over to the bed itself.

9 Q. And for the record, this picture does not show
10 his injury, does it?

11 A. Correct.

12 Q. After you photographed Ruben Martinez and the
13 CAT scan images and the equipment there that the medical
14 professionals were using to try to save his life, when
15 did you leave John Peter Smith Hospital?

16 A. Looks like I left there about 7, pretty close to
17 7, and arrived on that scene at about 7:10.

18 Q. Okay. Now, when a victim arrives at the
19 hospital, do they typically come in their clothing or do
20 they come with personal effects?

21 A. They typically come in clothing unless it's been
22 cut off by the staff that's trying to assist in keeping
23 them alive at the scene.

24 Q. Okay. Did Mr. Martinez come to the hospital
25 with many of his personal effects?

1 A. Yes.

2 Q. His clothing?

3 A. Yes.

4 Q. Did you ask the hospital to bag his clothing and
5 his personal effects?

6 A. Yes, ma'am.

7 Q. Did you have time to stay and wait for his
8 clothing and his personal effects?

9 A. No, ma'am.

10 Q. Why is that?

11 A. The -- at the scene they were advising me that
12 it had just started raining and they were worried about
13 the evidence there being compromised by the weather.

14 Q. Can you tell the members of the Jury what that
15 means when you're worried about evidence being
16 compromised? How can the weather compromise evidence?

17 A. Well, we've got several pieces of evidence that
18 are lying on the ground out in the open that potentially
19 have both DNA and fingerprint evidence on them. The rain
20 can wash away either one of those.

21 Also, any possible tracks or trails leading
22 away from there, since I was a K-9 tracker for years, I
23 know how to track people, so I want to know how they came
24 or how they left from the scene. And the water will
25 eventually, you know, wash that away so I may lose that

1 evidence.

2 Q. What about ballistics, Officer?

3 A. Ballistics can also be washed away by really
4 fast water, fast-moving water down the roadway. And
5 that particular roadway leans downhill towards the
6 intersection. Probably runs through there pretty quick.

7 Q. And so how about the projectile or the casing,
8 how would the weather affect your ability to find those?

9 A. For one thing, it makes the ground really soft
10 so people walking through an area can crush it down into
11 the ground to where we can't even see it. But, secondly,
12 again, it can be washed away into a drainage ditch or
13 someplace like that.

14 Q. And is there a difference between a contained
15 crime scene, in other words, one that is in an enclosed
16 room, and an -- a crime scene like this?

17 A. Yes, ma'am, a great deal of difference.

18 Q. What is the difference?

19 A. Exposure, for one thing, to just about anybody.
20 It's easier to contain an area where you have doors,
21 windows, walls, than it is an exterior area like that.

22 This is an open area to the public, so before we even got
23 there and could set up a perimeter, people have already
24 walked through it. They can pick up stuff and walk off
25 with it, so...

1 Q. This particular business, do you know what the
 2 name of the business is?

3 A. Shop and Save, I think.

4 Q. Okay. And is it informally known as the Texaco?

5 A. Yes.

6 Q. All right. What's the address?

7 A. I think it's 2700.

8 Q. Azle Avenue?

9 A. Azle Avenue.

10 Q. In Fort Worth?

11 A. Yes, ma'am.

12 Q. What are the major thoroughfares right there
 13 next to the Texaco?

14 A. 2700 Azle runs kind of northeast and
 15 southwest -- no, northwest and southeast. And then
 16 cutting across that would be Long, the 30 -- I think the
 17 2600 block of Long.

18 MS. JACK: May I approach this witness,
 19 Your Honor?

20 THE COURT: Yes, ma'am.

21 Q. Officer, if you can stand up for just a moment
 22 and take a look at these pictures. I'm showing you
 23 what's been marked for identification purposes as State's
 24 Exhibit 447, 448, 449, 450, 451, 452, 453, and 457. Do
 25 each of these pictures fairly and accurately depict both

26 1 the aerial views and the crime scene as you saw it on
 2 June 29th of 2010?

3 A. Yes, ma'am, they do.

4 MS. JACK: Your Honor, at this time the
 5 State would offer into evidence State's Exhibits 447
 6 through 453 and 457 for all purposes.

7 MR. HEISKELL: No objection, Your Honor.

8 THE COURT: Admitted.

9 (State's Exhibit Nos. 447 - 453, 457
 10 admitted.)

11 MS. JACK: May I have this witness step
 12 down?

13 THE COURT: Yes.

14 Q. (BY MS. JACK) Officer, if you would, I'm going
 15 to hold the picture. We've been having a little bit of
 16 trouble with this, so I'm going to have you stand over
 17 here at the far corner of my table and speak up real
 18 loudly and clearly so everybody on the Jury can hear.

19 A. Yes, ma'am.

20 Q. All right. I'm going to hold the picture.

21 A. Okay.

22 Q. All right. Beginning with State's Exhibit 447,
 23 we talked about the major thoroughfares -- and I'm going
 24 to ask you to turn somewhat where everybody on the Jury
 25 can see. Okay.

1 Looking at State's Exhibit 447, can you
 2 tell the members of the Jury where Azle and Long is?

3 A. This is going to be Azle. This is going to be
 4 Long.

5 Q. All right. So this street right here that kind
 6 of runs on a diagonal on this picture is Azle. All
 7 right. And then the street running directly in front of
 8 the Texaco would be Long; is that right?

9 A. Yes, ma'am.

10 Q. Now, this Jury has heard testimony about a
 11 robbery that took place at 2800 Azle Avenue at a bar.

12 A. Yes, ma'am.

13 Q. Can you show the members of the Jury how close
 14 the proximity is -- first of all, where is 2800 Azle
 15 Avenue?

16 A. Should be right in here.

17 Q. Okay. So this blue building right here, is that
 18 2800 Azle Avenue?

19 A. Yes, ma'am. That would be the start of 2800.

20 Q. All right. So if this Jury has already heard
 21 testimony about a robbery that occurred there, this would
 22 be the general proximity to the Texaco, a matter of two
 23 or three blocks?

24 A. One block.

25 Q. One block.

26 1 the aerial views and the crime scene as you saw it on
 2 June 29th of 2010?

1 A. You can see one location from the other
 2 actually.

3 Q. Okay. Now, if the Jury has already heard
 4 testimony about another robbery that occurred at 3005
 5 Northwest 26th, where is Northwest 26th on this map?

6 A. This is Northwest 26th and it runs northwest
 7 to southeast.

8 Q. Okay. And if the Jury has already heard that
 9 address, can you show the members of the Jury generally
 10 where that area would be?

11 A. These blocks are actually pretty short blocks
 12 relative to how they look in the actual photograph. If
 13 you take three of these, that would put that hundred
 14 block, "3000" hundred block of 26 right over here. So
 15 about this far.

16 Q. Okay. So we're talking a matter of how many
 17 blocks from Texaco?

18 A. Three blocks.

19 Q. Three blocks from the Texaco. So we have one
 20 robbery one block away, another robbery roughly three
 21 blocks away; is that right?

22 A. And this would pretty much be in the middle.

23 Q. Okay. Now, at the time that you were called out
 24 to go to the Texaco, were you aware of other Crime Scene
 25 officers working the Enrique Samaniego robbery?

1 A. I was not.
 2 Q. Okay. You had just come on duty?
 3 A. I -- they actually called me at my house and
 4 asked me to come in early.
 5 Q. Okay. So you were not aware at that time that
 6 other Crime Scene officers were working other crimes
 7 connected to this Defendant?
 8 A. No.
 9 Q. Okay. Looking now at State's Exhibit 448, is
 10 this a closer aerial view of the Texaco?
 11 A. Yes, ma'am.
 12 Q. And can you orient the Jury in terms of what you
 13 saw when you arrived?
 14 A. I believe that I arrived on Long. I came up 35
 15 and arrived on Long and came up from this area. And when
 16 I arrived on the scene, officers had this all blocked off
 17 with yellow tape, so I actually had to jump the median,
 18 come around and park over on this side over here. There
 19 were officers on the perimeter guarding the alley,
 20 guarding this area over here, pretty much from here all
 21 the way around to over here.
 22 Q. All right. So in terms of the crime scene, how
 23 large a crime scene are we talking about?
 24 A. About five times the size of a good size house,
 25 probably a half-acre.

1 Q. So right over here where my finger is would be
 2 where Ruben Martinez -- the truck that Ruben Martinez
 3 was supposed to drive that morning?
 4 A. On the other side, right.
 5 Q. Okay. Now, was he there when you arrived?
 6 A. No, he was not.
 7 Q. Because he was already at the hospital?
 8 A. Yes, ma'am.
 9 Q. All right. And what is this where my finger
 10 is?
 11 A. It's a drive-up window for the Shop and Save.
 12 Q. Okay. And over here to the other side of the
 13 picture of State's Exhibit 449, we see the gas pumps?
 14 A. Yes, ma'am.
 15 Q. Looking at State's Exhibit 450, what is State's
 16 Exhibit 450?
 17 A. State's Exhibit 450 was taken from the center
 18 median, basically almost directly towards the north.
 19 It's going to show -- my van is actually behind this
 20 one. It's going to show the entire front area of the
 21 store all the way over to the edge of the truck where
 22 the crime scene is taken from.
 23 Q. Now, were there one or two Ben E. Keith trucks
 24 there when you got there?
 25 A. There was only one when I got there.

1 Q. Okay. So we're talking about the parking lot,
 2 the business, and the lot which would be to the north?
 3 A. If -- well, you've got this alley, and then
 4 eventually I determined that I had track marks leading
 5 up this alley to over here, so it expanded and ended up
 6 taking this whole end of this block.
 7 Q. Okay. And when we say "the alley," is that, in
 8 fact, a vacant lot?
 9 A. It's a vacant lot that they've been using for
 10 traffic back and forth to that store, so it looks like
 11 an alley now and there's actually a driveway at the end
 12 of it.
 13 Q. Looking now at State's Exhibit 449, can you
 14 orient the Jury.
 15 A. Like I said, I parked on the side of the
 16 building, so as I approach, I start taking photographs.
 17 So this is my first photograph as I approach the building
 18 from the -- this would be the west side of the building,
 19 and I'm up against Azle Avenue.
 20 Q. Okay.
 21 A. This is the Ben E. Keith truck, and the crime
 22 scene actually -- the shooting actually occurred on the
 23 other side of it.
 24 Q. Okay. And you said the Ben E. Keith truck?
 25 A. Yeah, Ben E. Keith.

1 Q. Okay. Can you tell the members of the Jury what
 2 State's Exhibit -- sorry -- 451 shows?
 3 A. This is going to show the -- basically the east
 4 side of my crime scene. This is the truck. This area
 5 here is where I've actually covered property with a tarp
 6 because it was raining. This also -- the crime scene
 7 also leads all the way back to this area over here and
 8 continues on around.
 9 Q. All right. Now, looking at this picture, can
 10 you show the members of the Jury where the dumpster is?
 11 A. Be right there.
 12 Q. Can you show the members of the Jury where the
 13 pay phones are?
 14 A. Right here.
 15 Q. All right. And where -- if someone were to park
 16 on the other side of the vacant field on what would be, I
 17 guess, 27th street?
 18 A. Uh-huh.
 19 Q. Where they would be running from?
 20 A. Running from?
 21 Q. If they parked on the other side --
 22 A. Right.
 23 Q. -- of the vacant field --
 24 A. Right.
 25 Q. -- on 27th Street, can you show the members of

1 the Jury where they would come out in relation to this
 2 business.

3 A. They're going to actually come out at the end
 4 of this fence. That fence goes across the alley side
 5 and then goes all the way across the north side of that
 6 property.

7 Q. I'm going to ask you to step back just a
 8 little bit. All right. So if we're showing the
 9 Jury where they would come out, would they come out
 10 in this general area?

11 A. Yes, ma'am.

12 Q. Okay. So the vacant field is this direction?

13 A. Correct.

14 Q. Okay. Looking now at State's Exhibit 453,
 15 can you tell the members of the Jury what this is
 16 depicting?

17 A. This was shot from the end of the alley at the
 18 curb line, and it basically depicts down the side of the
 19 truck back towards the dumpster, the alley, and the
 20 businesses behind it which is a washateria.

21 Q. Okay. And is the washateria adjoining the
 22 building with the Texaco?

23 A. No.

24 Q. Okay. So we can see the dumpster over here. We
 25 can see the pay phones. And that same field, if someone

34 1 were to park on the other side of the vacant field and
 2 they would come out, would they come out in this general
 3 area right here?

4 A. Yes, ma'am.

5 Q. Okay.

6 A. They'd basically come out straight across from
 7 the dumpster.

8 Q. Okay. Can you tell the members of the Jury what
 9 they see in State's Exhibit 452?

10 A. This was prior to laying down the plastic. Of
 11 course, we've got blood in this area here. Two boxes
 12 that were collected. This is paraphernalia that was left
 13 there by MedStar. After they treat them, they'll bag
 14 that and drop it on the scene. Cell phone and then an
 15 I.D. from our victim.

16 Q. Ruben Martinez?

17 A. Yes.

18 Q. Okay.

19 A. Way over there is some gum and some coins that
 20 were pulled out of his pocket, we believe, and dropped
 21 there.

22 Q. Okay. And the coins, how many coins were there?

23 A. Two quarters.

24 Q. All right. Now, were there change -- was there
 25 change removed from his personal effects at the hospital?

1 A. Yes.

2 Q. Okay. So these two coins were at the scene?

3 A. Yes, ma'am.

4 Q. All right. Different locations?

5 A. Yes, ma'am.

6 Q. All right. You can go ahead and take your seat,
 7 Officer.

8 Officer, I'm showing you what's been marked
 9 as State's Exhibit 454 for identification purposes.

10 A. Yes, ma'am.

11 Q. Did you create this exhibit?

12 A. Yes, ma'am, I did.

13 Q. Does it illustrate where you found the various
 14 pieces of evidence out at the crime scene?

15 A. Yes, ma'am.

16 MS. JACK: Okay. Your Honor, at this time
 17 the State would offer State's Exhibit 454 into evidence.

18 MR. HEISKELL: No objection, Your Honor.

19 THE COURT: Admitted.

20 (State's Exhibit No. 454 admitted.)

21 MS. JACK: May I publish it, Your Honor?
 22 THE COURT: Yes, ma'am.

23 Q. (BY MS. JACK) All right. Officer?

24 A. Yes, ma'am.

25 Q. Can you tell the members of the Jury what items

36 1 through 4 were and where they were found?

2 A. Item 1 was a Ben E. Keith name badge with the
 3 name "Ruben Martinez". It was collected from the
 4 sidewalk southeast of the truck. Item No. 2 was a Nokia
 5 2610 cell phone. It was collected from the sidewalk
 6 southeast of the truck. 3 was an open package of Stride
 7 spearmint gum that was collected in the driveway east of
 8 the truck. And 4 were two quarters collected in the
 9 driveway east of the truck.

10 Q. Okay. How close to the truck were the two
 11 quarters?

12 A. About a foot, maybe a foot and a half out from
 13 the truck.

14 Q. Okay.

15 A. Right straight up from the driver's door.

16 Q. All right. Where did you find the beer boxes?

17 A. They were at the curb line.

18 Q. And the two buttons, where were the two buttons
 19 found?

20 A. The two buttons were found about 20 feet in from
 21 the south curb line, pretty much just in a straight line,
 22 pretty close together.

23 Q. Okay. And you've indicated on this exhibit
 24 where the shoe tracks were found. Where were the shoe
 25 tracks?

1 A. The shoe tracks were right at the -- as you
 2 leave the alley and start into the vacant lot.
 3 Q. Okay. Were the shoe tracks consistent with
 4 where someone would arrive at the business if they were
 5 to come through the vacant field?

6 A. The particular shoe track, no.

7 Q. Okay.

8 A. They are consistent with a person leaving at a
 9 high rate of speed and turning the corner.

10 Q. All right. Fair enough. Fair enough. So those
 11 shoe tracks were more consistent with individuals leaving
 12 the crime scene?

13 A. Yes, ma'am.

14 Q. Okay. Did you collect -- did you collect all
 15 the evidence?

16 A. Yes, ma'am, I did.

17 Q. All right. And what did you do with it once
 18 you collected it?

19 A. It was all taken back to our secure facility
 20 where I allowed it to dry because most of it was blood
 21 soaked and we're not allowed to place blood-soaked items
 22 in the property room.

23 Q. Okay.

24 A. So I had to let it dry, I believe, two days in
 25 the secured facility, and then it was marked and packaged

38 1 and placed in the Property Control Unit by me.

2 Q. Did you look for a bullet in this case?

3 A. Yes, ma'am, I did.

4 Q. Did you look for a shell casing in this case?

5 A. Yes, ma'am, I did.

6 Q. Can you tell the members of the Jury all the
 7 efforts that you went through personally to try to find
 8 a projectile.

9 A. We actually, once we found out that the
 10 projectile most likely passed through Mr. Martinez, we
 11 actually expanded our crime scene to go all the way over
 12 to all the buildings that were actually across the
 13 intersection, thinking they might have become a backdrop
 14 so if the bullet struck it, it would drop within a foot
 15 or so. We searched that entire area as well.

16 I had about ten detectives, officers and
 17 sergeants assist me in the search initially. And then
 18 another Crime Scene Unit came out and we searched all of
 19 the grassy area here and all of the grassy area in the
 20 center median with metal detectors. We found lots of
 21 stuff but no shell casings or projectiles.

22 Q. So on June 29th, how many officers looked for
 23 the projectile?

24 A. At least ten.

25 Q. And you mentioned it being a through-and-through

1 injury?

2 A. Yes.

3 Q. Can you tell the Jury what that means?

4 A. The bullet actually enters on one side having an
 5 entry wound, and then at some point makes its way back
 6 out of the body leaving an exit wound. And pieces may be
 7 left of the bullet inside, but the major parts of it have
 8 exited.

9 Q. Okay. And when a semi-automatic, specifically
 10 a 9 millimeter, Hi-Point 9 millimeter is fired, what
 11 happens to the casing, generally speaking?

12 A. Generally, it should be ejected from the weapon.

13 Q. Okay. And, generally speaking, does it go up
 14 and to the right?

15 A. On most weapons, it does.

16 Q. On most semi-automatics?

17 A. Yes, ma'am.

18 Q. All right. And when a casing hits the ground or
 19 a projectile hits the ground, especially when it's
 20 asphalt or concrete, what can happen?

21 A. It will normally bounce and roll to the lowest
 22 point gravity will carry it, or, in some cases, wind.

23 Q. Okay. So you have wind affecting your ability
 24 to find these things, you have rain potentially affecting
 25 your ability to find these things. How many people were

38 1 at this crime scene?

2 A. All in all, probably 14.

3 Q. And that's just officers?

4 A. Officers and detectives, yes.

5 Q. And when officers arrive at a crime scene, while
 6 they try to protect the crime scene, they're walking; is
 7 that correct?

8 A. Yes, ma'am.

9 Q. And when people get there to try to save lives,
 10 who normally arrives at a crime scene?

11 A. MedStar ambulance service and the fire
 12 department, which both had driven through the crime scene
 13 area actually.

14 Q. When a car drives through a crime scene, what
 15 can happen?

16 A. Unfortunately, they can pick up the shell
 17 casings and/or projectiles in their tires and carry them
 18 from the crime scene.

19 Q. In their tread of a tire --

20 A. Yes, ma'am.

21 Q. -- they can pick up a projectile; they can pick
 22 up a casing?

23 A. Yes, ma'am.

24 Q. And when MedStar arrives, is MedStar concerned,
 25 more concerned with saving a life than protecting the

1 crime scene?
 2 A. Yes, ma'am.
 3 Q. How about the fire department?
 4 A. Same thing.
 5 Q. And when we have firemen, are firemen also
 6 trained EMTs?
 7 A. Yes, ma'am, they are.
 8 Q. Every fireman?
 9 A. Yes, ma'am.
 10 Q. So when they get to a crime scene, they're going
 11 to be more concerned with saving a life than saving a
 12 crime scene?
 13 A. Yes, ma'am. And normally they want to get their
 14 equipment as close to the victim as possible.
 15 Q. Okay. And do the fire department respond every
 16 time with MedStar?
 17 A. As a rule, yes.
 18 Q. So we have individuals walking, we have trucks,
 19 we have cars, we have the weather. Everything kind of
 20 worked against you in this case?
 21 A. Yes, ma'am.
 22 Q. All right. Did you look all over the truck to
 23 see if the projectile struck the truck?
 24 A. Yes, ma'am. I did find one defect in the
 25 upper -- there's a cowling that goes across the top to

41
 1 deflect the wind up over the top of the truck trailer
 2 itself, it's kind of efficiency-type thing. It had a
 3 defect in it, but I determined that that was actually
 4 from striking something and not from a bullet hole
 5 itself.
 6 I crawled underneath the vehicle and
 7 searched in the tires before it was moved. And then
 8 after it was moved, I searched it all again.
 9 Q. And you're doing all this in the rain?
 10 A. Yes, ma'am.
 11 Q. As are 14 other officers?
 12 A. Yes, ma'am.
 13 Q. How long were you-all at the crime scene,
 14 processing the crime scene, looking for projectile -- a
 15 projectile or a casing?
 16 A. Give me just a moment to look at that. Looks
 17 like I was there about three-and-a-half hours.
 18 Q. Okay. And were the other officers there as
 19 well?
 20 A. Yes, ma'am.
 21 Q. Okay. I want to jump ahead for just a moment.
 22 Did you return to that crime scene approximately October
 23 15th of that same year?
 24 A. Yes, ma'am, I did.
 25 Q. And what was the purpose?

42
 1 A. To research. Along an area between concrete
 2 and grass, there is a little trough there. So we
 3 basically went out to research and see if we could find
 4 the shell casing in that trough area, in that grass area
 5 or in that center median area. And also in the street
 6 between the concrete curbs and the asphalt roadway,
 7 you'll have a trough there. We searched those areas as
 8 well.

9 Q. How many officers went out to the crime scene
 10 that time?

11 A. I believe I've got one detective, two Crime
 12 Scene officers, Crime Scene sergeant, yourself and --

13 Q. I was trying to leave myself out of this.

14 A. And one other. There were five.

15 Q. Was every effort made to find that projectile
 16 or the shell casing?

17 A. I believe so. We did find items that were close
 18 as far as how they looked. There's a sheet metal or sheet
 19 manufacturing company, metal manufacturing company that
 20 recycles, recycles, not too far away, so there's a lot of
 21 metal in those curb lines.

22 We found something that was consistent with
 23 a wad cutter, but I picked it up with a magnet, and
 24 bullets are not magnetizable. I went ahead and collected
 25 them and put them in the Property Room, but they were not

43
 1 bullets.
 2 Q. So they were not bullets?
 3 A. Right.
 4 Q. So we had two different groups of individuals go
 5 out and search the area in hopes of finding the projectile
 6 or the shell casing?
 7 A. Yes, ma'am.
 8 Q. Okay. Are you satisfied that every effort was
 9 made?
 10 A. I believe we did.
 11 Q. Okay. Officer, I'm showing you what's been
 12 marked as State's Exhibit 470. Do you recognize this
 13 exhibit?
 14 A. Yes, ma'am. It's a package that I packaged and
 15 submitted to the Property Control Unit.
 16 Q. And what does the package contain?
 17 A. It should be an empty beer box, a Budweiser
 18 brand. It's also blood stained with blood spatter and
 19 transfer.
 20 Q. Okay. Officer, do you have a pair of scissors
 21 up there?
 22 A. I got a pocket knife.
 23 Q. You have a pocket knife. Can you go ahead and
 24 open State's Exhibit 470.
 25 A. (Witness complied.)

1 Q. Officer, would you please remove the contents
2 of State's Exhibit 470.

3 A. Here's my initials.

4 Q. All right. I'm going to ask you to say that --
5 Do you recognize the contents of State's Exhibit
6 No. 470?

7 A. Yes, ma'am. It has my initials and I.D. on it.

8 Q. All right. And does State's Exhibit 470 --
9 (Pause in proceeding.)

10 Q. Did you place the contents of State's Exhibit
11 470 in a baggy marked State's Exhibit 470-A?

12 A. Yes, ma'am, I did.

13 MS. JACK: All right. Your Honor, at this
14 time, the State would offer State's Exhibit 470 for the
15 record, and State's Exhibit 470-A for all purposes.

16 MR. HEISKELL: No objection as offered,
17 Judge.

18 THE COURT: 470-A is the bag or is 470 the
19 exhibit inside the bag?

20 MS. JACK: 470 --

21 Q. (BY MS. JACK) Well, Officer, let me ask you
22 this. Is the contents of State's Exhibit 470-A what was
23 previously the contents of State's Exhibit 470?

24 A. Correct.

25 Q. In other words, you took the beer box out of

46 1 470 and put it in the baggy marked 470-A?

2 A. Yes, ma'am.

3 MS. JACK: So I'm offering State's Exhibit
4 470 for the record, and the contents of 470-A for all
5 purposes, Your Honor.

6 MR. HEISKELL: Yes, that's fine.

7 THE COURT: Admitted.

8 (State's Exhibit No. 470 admitted for
9 record purposes only.)

10 (State's Exhibit No. 470-A admitted.)

11 Q. (BY MS. JACK) And, Officer, I see some dots
12 down on the bottom of State's Exhibit 470-A. Can you
13 tell the members of the Jury what this is?

14 A. That would appear to be blood spatter.

15 Q. Okay.

16 A. And it's medium velocity.

17 Q. What is medium velocity?

18 A. High velocity is when you're very close to
19 something that moves at an extremely high rate of speed;
20 the drops are much smaller.

21 Medium velocity is over 1 millimeter in size
22 up to about 5 millimeters in size, and that's the stuff
23 that goes past. The smaller it is, the less distance it
24 can go. So medium velocity can go farther. So those are
25 medium velocity.

1 Q. Okay. And in terms of being a Crime Scene
2 officer, what does that tell you or what is that
3 consistent with having happened or how close the victim
4 was to this beer box?

5 A. He was probably within about four feet, and
6 that's about as far as medium velocity will go.

7 Q. Okay. And is this -- is this consistent with
8 his breathing after he's been shot or is this consistent
9 with him having been shot in close proximity to this
10 beer box?

11 A. It could be either one.

12 Q. Okay. All right. So this could be while he's
13 struggling to breathe or it could be he was shot in
14 close proximity to the beer box?

15 A. Right.

16 Q. Did you collect the second beer box?

17 A. Yes, ma'am.

18 Q. And is that marked State's Exhibit 471 on the
19 backside?

20 A. Yes.

21 Q. And is that the packaging for the second beer
22 box?

23 A. Yes, ma'am.

24 Q. And do you recognize State's Exhibit 471?

25 A. It's my packaging.

48 1 Q. Your packaging, your initials, you collected on
2 June 29th?

3 A. Yes.

4 Q. If you would, go ahead and open it, Officer.

5 A. (Witness complied.)

6 Q. Again, if you can, can you go ahead and put it
7 in the bag.

8 A. (Witness complied.)

9 MS. JACK: Your Honor, at this time, the
10 State would offer State's Exhibit 471 for the record, and
11 the contents of State's Exhibit 471-A for all purposes.

12 MR. HEISKELL: No objection as offered,
13 Your Honor.

14 THE COURT: Admitted.

15 (State's Exhibit No. 471 admitted for
16 record purposes only.)

17 (State's Exhibit No. 471-A admitted.)

18 Q. (BY MS. JACK) Officer, is there something
19 significant about State's Exhibit 471-A?

20 A. First, let me tell you that this is --

21 Q. That's your bag.

22 A. -- my initials and I.D. here marking this as my
23 evidence. These two boxes were actually overlaying each
24 other, so this has got a continuation of blood spatter
25 coming from about 4 feet away by the indication of the

length of how long it hit and then ran afterwards. The other box was laid over the top of this, so it got some of the smaller spatter.

Q. Okay.

(Pause in proceeding.)

Q. Okay. Officer, we've marked a series of bags; is that correct?

A. Yes, ma'am.

Q. Now, and we've marked them collectively State's Exhibits 472 through 480; is that correct?

A. Yes, ma'am.

Q. All right. I'm going to ask you, do you recognize each one of these bags?

A. Yes, ma'am, they're all packages that I packaged.

Q. And how do you know they're all packages that you packaged?

A. They have my initials and I.D. at the bottom of each one. As we went through them, I looked for those. Plus the inventory markings that were done by me.

Q. Okay. So each of those bags collectively holds either items that were collected from the crime scene or items that were collected from the hospital; is that correct?

A. Yes, ma'am.

Q. Okay. Now, can you tell me which bags contain the items that were found at the crime scene, the smaller items?

A. Can I pull these apart?

Q. Yes.

A. These four items, Items 1 through 4.

Q. And you've indicated State's Exhibit 472, State's Exhibit 473, 474 and 480; is that correct?

A. Yes, ma'am.

Q. Okay. Now, can you go ahead and open the packaging for State's Exhibit 472, please.

A. (Witness complied.)

Q. Okay. All right. Does the baggy marked State's Exhibit 472-A contain the contents of what was previously marked or contained within the bag State's Exhibit 472?

A. Yes, ma'am, it does.

MS. JACK: All right. Your Honor, at this time, State would offer State's Exhibit 472 for record purposes, and State's Exhibit -- the contents of State's Exhibit 472-A for all purposes.

MR. HEISKELL: No objection.

THE COURT: Admitted.

(State's Exhibit No. 472 admitted for

record purposes only.)

(State's Exhibit No. 472-A admitted.)

Q. (BY MS. JACK) Officer, if you would, go ahead and please open State's Exhibit 473.

A. (Witness complied.)

Q. Was this the victim's phone that was found at the crime scene?

A. Yes, ma'am, it was the phone that was found at the crime scene.

Q. And you removed that from the baggy marked State's Exhibit 473?

A. Yes, ma'am, I did.

Q. You placed it into the plastic baggy marked State's Exhibit 473-A?

A. Yes, ma'am, I did.

MS. JACK: Your Honor, at this time, the State would offer 473 for record purposes, the contents of State's Exhibit 473-A for all purposes.

MR. HEISKELL: No objection, Your Honor.

THE COURT: Admitted.

(State's Exhibit No. 473 admitted for record purposes only.)

(State's Exhibit No. 473-A admitted.)

Q. (BY MS. JACK) Officer, if you would, please open State's Exhibit 474.

A. (Witness complied.)

Q. Officer, did you place the contents of State's Exhibit 474 into the baggy marked State's Exhibit 474-A?

A. Yes, ma'am, I did.

MS. JACK: Your Honor, at this time, the State would offer State's Exhibit 474-A (sic) for record purposes, and the contents of State's Exhibit 474-A for all purposes.

MR. HEISKELL: No objection.

THE COURT: Okay. You named -- you numbered those 474-A and 474-A?

MS. JACK: 474 would be the baggy -- I'm sorry. 474-A (sic) would be the paper sack. State's Exhibit 474-A would be the baggy that contains the contents of what was previously State's Exhibit 474.

MR. HEISKELL: Yes, that's fine.

THE COURT: Admitted.

(State's Exhibit No. 474 admitted for record purposes only.)

(State's Exhibit No. 474-A admitted.)

Q. (BY MS. JACK) Now, Officer, can you go ahead and open State's Exhibit 480, please.

A. (Witness complied.)

Q. And the contents of State's Exhibit 480, have you now placed into a baggy about to be marked State's

1 Exhibit 480-A?
 2 A. Yes, ma'am.
 3 MS. JACK: Thank you. I'll offer State's
 4 Exhibit 480 for the record, State's Exhibit 480-A for all
 5 purposes.
 6 MR. HEISKELL: No objection.
 7 THE COURT: Admitted.
 8 (State's Exhibit No. 480 admitted for
 9 record purposes only.)
 10 (State's Exhibit No. 480-A admitted.)
 11 Q. (BY MS. JACK) And these two quarters were found
 12 at the crime scene?
 13 A. Yes, ma'am.
 14 Q. The rest of Ruben's change was at the hospital?
 15 A. Yes, ma'am.
 16 Q. Now, Officer, if you would, go ahead and open
 17 the next exhibit -- well, let me ask you this, Officer.
 18 State's Exhibit 476 contains the day planner that was
 19 found among the property of Ruben Martinez at the
 20 hospital; is that correct?
 21 A. Yes, ma'am.
 22 MS. JACK: We'll offer State's Exhibit 476.
 23 MR. HEISKELL: You said it was the what?
 24 MS. JACK: Day planner, year calendar.
 25 MR. HEISKELL: No objection.

1 THE COURT: 476 is admitted.
 2 (State's Exhibit No. 476 admitted.)
 3 Q. (BY MS. JACK) Officer, if you can, would you
 4 please open State's Exhibit 477.
 5 A. (Witness complied.)
 6 Q. Pocket knife?
 7 A. Yes, ma'am.
 8 Q. Okay. Something somebody would use to cut boxes
 9 and break them down when they deliver something?
 10 A. Looks that way.
 11 Q. All right. Would you please place that in the
 12 baggy marked State's Exhibit 477-A.
 13 A. Okay.
 14 MS. JACK: I'll offer State's Exhibit 477
 15 for the record, State's Exhibit -- or the contents of
 16 State's Exhibit 477-A for all purposes.
 17 MR. HEISKELL: No objection.
 18 THE COURT: Admitted.
 19 (State's Exhibit No. 477 admitted for
 20 record purposes only.)
 21 (State's Exhibit No. 477-A admitted.)
 22 Q. (BY MS. JACK) Officer, if you can go ahead and
 23 open State's Exhibit 478, please.
 24 A. (Witness complied.)
 25 Q. All right. Is State's Exhibit 478-A the

1 contents of State's Exhibit 478?
 2 A. Yes, ma'am, it is.
 3 MR. HEISKELL: No objection.
 4 THE COURT: Admitted.
 5 MS. JACK: 478-A for all purposes, contents
 6 of it, and 478 for the record.
 7 (State's Exhibit No. 478 admitted for
 8 record purposes only.)
 9 (State's Exhibit No. 478-A admitted.)
 10 Q. (BY MS. JACK) Officer, I want to point out, the
 11 container that holds the jewelry in State's Exhibit
 12 478-A, is that a Crime Scene container?
 13 A. No, actually that's a hospital container.
 14 Q. And was this the hospital container that John
 15 Peter Smith Hospital placed Mr. Martinez's jewelry in?
 16 A. Yes, ma'am.
 17 Q. And what is the name indicated on there?
 18 A. John Doe 3.
 19 Q. Okay. When somebody goes to John Peter Smith
 20 Hospital and the medical technicians are moving so
 21 quickly, do they have time necessarily to get someone's
 22 name?
 23 A. No.
 24 Q. Does this tell you they were moving as quickly
 25 as possible to save his life?

1 A. Yes.
 2 Q. Officer, can you please open the next bag.
 3 A. (Witness complied.)
 4 Q. Is State's Exhibit 475 the baggy -- I'm sorry --
 5 the paper bag that contained what is now the contents of
 6 State's Exhibit 475-A?
 7 A. Yes, ma'am.
 8 Q. All right. And is the contents of State's
 9 Exhibit 475-A the phone that was collected from the
 10 victim's property at the hospital?
 11 A. Yes, ma'am.
 12 MS. JACK: Okay. Your Honor, at this time,
 13 the State would offer State's Exhibit 475 for the record,
 14 State's Exhibit -- the contents of State's Exhibit 475-A
 15 for all purposes.
 16 MR. HEISKELL: No objection.
 17 THE COURT: Admitted.
 18 (State's Exhibit No. 475 admitted for
 19 record purposes only.)
 20 (State's Exhibit No. 475-A admitted.)
 21 Q. (BY MS. JACK) All right. Officer, I'm showing
 22 you what's been marked as State's Exhibit 481.
 23 A. Yes, ma'am.
 24 Q. Do you recognize State's Exhibit 481?
 25 A. Yes, ma'am.

1 Q. How do you recognize it?
 2 A. That's my initials and I.D. on it and my invoice
 3 tag that I filled out.

4 Q. What does it contain?
 5 A. It contains the victim's clothing.
 6 Q. All right. The victim Ruben Martinez?
 7 A. Victim Ruben Martinez. It says boxers,
 8 underwear, T-shirt, socks, shoes, shorts, belt and shirt.

9 Q. Okay.
 10 A. And stamped "biohazard", so they will be blood
 11 soaked.

12 Q. When it's stamped "biohazard" as some of these
 13 packages are stamped, what does that mean?

14 A. That there was the potential for there being
 15 blood on it at the scene or there definitely was blood
 16 on it.

17 Q. And you know there was blood on it?
 18 A. Yes, ma'am.

19 Q. Officer, if you would, go ahead and open that,
 20 please.

21 A. (Witness complied.)

22 Q. Now, these items are wrapped a little
 23 differently?

24 A. Yes, ma'am.

25 Q. Why is that?

1 Q. Okay. And so that's why these are marked a
 2 little bit differently?

3 A. Yes, ma'am.

4 Q. All right. Officer, I'm going to ask you to go
 5 ahead and open the first sack, please. I'm going to ask
 6 you -- we're going to put it all in one sack.

7 A. (Witness complied.)

8 MS. JACK: All right. Your Honor, at this
 9 time, State would offer State's Exhibit 481 for the
 10 record, State's Exhibit 481-A and State's Exhibit
 11 481-A-1 for all purposes.

12 MR. HEISKELL: Which one is A-1?

13 MS. JACK: A-1 is the shorts.

14 (Sotto voce discussion.)

15 MR. HEISKELL: No objection, Your Honor.

16 THE COURT: Admitted.

17 (State's Exhibit No. 481 admitted for
 18 record purposes only.)

19 (State's Exhibit No. 481-A and
 20 481-A-1 admitted.)

21 Q. (BY MS. JACK) Okay. Officer, I'm going to ask
 22 you just to hold those up where the Jury can see them for
 23 just a moment.

24 A. (Witness complied.)

25 Q. Now, they're cut obviously. Who cut them?

1 A. Anytime something has blood on it, I want to
 2 protect anybody that might open this, so I wrap it again
 3 in -- in this craft paper to protect any DNA that might
 4 be on it from accidentally being contaminated by another
 5 piece of evidence in the box or from contaminating a
 6 person who might have to handle it.

7 Q. All right. I want to talk about the shirt and
 8 the shorts. Can you put your hand on the shirt and the
 9 shorts?

10 A. Shirt, undershirt, short pants and belt.

11 Q. All right. And I'm going to ask you to keep
 12 your voice up, if that's okay.

13 A. Okay. Sorry.

14 Q. That's okay. Are those items in a baggy inside
 15 of the white, I guess, butcher paper, for lack of a
 16 better word?

17 A. No, they won't be. They'll be wrapped directly
 18 in it.

19 Q. Okay.

20 A. Potential DNA evidence can't be wrapped in
 21 plastic because it will cause it to degrade. It starts
 22 to mold and actually kill itself. So everything that has
 23 potential DNA on it has to be wrapped in something
 24 breathable; so anything that's cardboard, paper is
 25 breathable.

1 A. MedStar personnel or F.D. personnel would have
 2 done that.

3 Q. And they read "Budweiser" on the bottom?

4 A. Yes, ma'am.

5 Q. Is that part of the uniform?

6 A. Yes, ma'am.

7 Q. And on the inside of the shorts on the waistband
 8 we see what appears to be blood? I'm sorry, on his leg.

9 A. Actually, the zipper.

10 Q. On the zipper, okay. So it would be the
 11 waistband if it was completely zipped up and had not been
 12 cut?

13 A. Right.

14 Q. Okay. Officer, if you would, let's go ahead and
 15 put both of these exhibits in a bag.

16 A. (Witness complied.)

17 Q. If you would, please, Officer, if you would go
 18 ahead and open -- hold on just a moment; wait -- what has
 19 been marked for identification purposes as State's
 20 Exhibit 481-B, and that contains what?

21 A. It says undershirt.

22 MS. JACK: And it's packaged, for the
 23 record, in the same fashion as the shorts.

24 Q. Have I now marked the white undershirt State's
 25 Exhibit 481-B-1 for identification purposes?

1 A. Yes, ma'am, you have.

2 MS. JACK: Your Honor, at this time, the
3 State would offer State's Exhibit 481-B and State's
4 Exhibit 481-B-1 for all purposes.

5 MR. HEISKELL: No objection.

6 THE COURT: Admitted.

7 (State's Exhibit No. 481-B and 481-B-1
8 admitted.)

9 Q. (BY MS. JACK) Officer, can you please show the
10 members of the Jury.

11 A. (Witness complied.)

12 Q. And the brown spots we see on the undershirt,
13 are those consistent with blood?

14 A. Yes, ma'am.

15 Q. Are these among the items that you allowed to
16 dry in the Fort Worth crime lab -- Crime Scene Unit
17 office?

18 A. Yes, ma'am. Took about two days.

19 Q. Took about how long?

20 A. Two days.

21 Q. Okay. I'm going to ask you to go ahead and
22 place those in this bag.

23 A. (Witness complied.)

24 Q. Officer, I'm going to ask you to open State's
25 Exhibit 481-C or what's been marked as State's Exhibit

62 1 481-C. And is that packaged the same way as the other
2 two pieces of clothing, for the record?

3 A. Yes, ma'am.

4 MS. JACK: Okay. Your Honor, at this time,
5 the State would offer State's Exhibit 481-C and State's
6 Exhibit 481-C-1 for all purposes.

7 MR. HEISKELL: No objection, Your Honor.

8 THE COURT: Admitted.

9 (State's Exhibit No. 481-C and 481-C-1
10 admitted.)

11 Q. (BY MS. JACK) And for the record, the brown
12 spot that we see on a large part of the shirt, is that
13 consistent with blood?

14 A. Yes, ma'am, it is.

15 Q. And is -- are that -- is that one of the items
16 of clothing that you had to allow to dry in the Fort
17 Worth Crime Scene office?

18 A. Yes, ma'am.

19 Q. How long did it take for it to dry?

20 A. Two days.

21 MS. JACK: Hold on just a moment.

22 Your Honor, at this time, the State would
23 offer 481-C and State's Exhibit 481-C-1 for all purposes.

24 MR. HEISKELL: I thought that was --

25 MS. JACK: The Court previously admitted

1 it?

2 MR. HEISKELL: 481-C.

3 MS. JACK: All right. You can put those in
4 there.

5 May I have a moment, Your Honor?

6 THE COURT: Yes.

7 Q. (BY MS. JACK) Officer, did you photograph the
8 victim's clothing in this case?

9 A. Yes, ma'am, I did.

10 Q. What is the purpose of photographing the
11 victim's clothing as it's drying?

12 A. Well, the main thing is to potentially try to
13 see something with the camera that we might not be seeing
14 with the naked eye that we may see later when we look at
15 the photographs blown up. Also to have a photographic
16 record of what we saw.

17 Q. Does State's Exhibit 485 and 486 -- I'm sorry,
18 485 and 458 and 459 fairly and accurately show the
19 victim's clothing as it was drying on June the 29th?

20 A. Yes, ma'am. One of the other things we do is
21 we look for entry/exit wounds and try to put them back
22 together as close as possible, and look for other
23 potential --

24 Q. At the time you're responding to a crime scene,
25 do you know, for instance, how many times a victim has

64 1 sustained an injury?

2 A. No, ma'am.

3 Q. How many different wounds you're looking for?

4 A. No, ma'am.

5 Q. How many different projectiles or casings?

6 A. No, ma'am.

7 Q. And does State's Exhibit 460, is that a fair and
8 accurate depiction of the victim's personal property,
9 both found at the crime scene and at -- from taken at the
10 hospital?

11 A. Yes, ma'am.

12 MS. JACK: Your Honor, State would offer
13 State's Exhibit 458 through 460 into evidence for all
14 purposes.

15 MR. HEISKELL: No objection.

16 THE COURT: Admitted.

17 (State's Exhibit Nos. 458 - 460 admitted.)

18 MS. JACK: May I publish them, Your Honor?

19 THE COURT: Yes, you may.

20 Q. (BY MS. JACK) State's Exhibit 458, is this
21 Ruben Martinez' shorts as they're drying in the Crime

22 Scene office of the Fort Worth Police Department?

23 A. Yes, ma'am.

24 Q. Same shorts the Jury has already seen?

25 A. Yes.

1 Q. State's Exhibit 459 shows the victim's top shirt
 2 that he was wearing on June the 29th?
 3 A. Yes, ma'am.
 4 Q. Indicating part of his uniform?
 5 A. Right.
 6 Q. We see the name "Budweiser" and we see the name
 7 "Ruben" on it?
 8 A. Yes, ma'am.
 9 Q. And, in fairness, there are cuts on the shirt;
 10 and were those cuts, using your best judgment and common
 11 sense, made by MedStar?
 12 A. They're consistent with what EMTs will do.
 13 Q. Okay. And did you allow this shirt to dry in
 14 the Crime Scene office as well?
 15 A. For two days, yes, ma'am.
 16 Q. Okay. Looking now at State's Exhibit 460, is
 17 this the personal property collected from the crime
 18 scene, these items, and the personal property collected
 19 from the hospital?
 20 A. Correct.
 21 Q. Okay. Officer, did you ever come across a
 22 wallet?
 23 A. No, ma'am.
 24 Q. Not at the hospital?
 25 A. No, ma'am.

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1 Q. (BY MS. JACK) For the record, Officer, how many
 2 pictures of Mr. Samaniego were taken?
 3 A. I believe I took ten.
 4 Q. You took ten. And this was when he was -- after
 5 his surgery had been completed?
 6 A. Yes, ma'am.
 7 Q. Okay. And this was at John Peter Smith
 8 Hospital; is that correct?
 9 A. Yes, ma'am.
 10 Q. Can you tell the members of the Jury where the
 11 injuries to Mr. Samaniego were central -- centralized or
 12 focused?
 13 A. The injuries that I could see basically started
 14 here at the top of the sternum and went all the way down
 15 to basically the naval area.
 16 Q. Okay. And State's Exhibit 445, this is after
 17 Mr. Samaniego had undergone lifesaving surgery; is that
 18 correct?
 19 A. That's my understanding.
 20 Q. So some of the bandaging is as a result of the
 21 surgery?
 22 A. Yes, ma'am.
 23 Q. Okay. But it was your understanding he was shot
 24 in the stomach multiple times?
 25 A. Yes, ma'am.

1 Q. Not at the scene?
 2 A. No, ma'am.
 3 Q. All right. Thank you. Officer, I'm showing you
 4 what's been marked as State's Exhibit 444 and State's
 5 Exhibit 445. Do you recognize what's portrayed in these
 6 exhibits?
 7 A. Yes, ma'am, I do.
 8 Q. Okay. Do they fairly and accurately depict
 9 another victim in this case, Mr. Enrique Samaniego?
 10 A. Yes, ma'am, they do.
 11 Q. And do they fairly and accurately depict him at
 12 John Peter Smith Hospital?
 13 A. Yes, ma'am.
 14 Q. On July the 2nd of 2010?
 15 A. Yes, ma'am.

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16 MS. JACK: Your Honor, at this time, the
 17 State would offer into evidence State's Exhibit 444 and
 18 445 for all purposes.

19 MR. HEISKELL: No objection to 444, Your
 20 Honor. We do object to 445, Rule 403, probative value
 21 is outweighed by the prejudicial.

22 THE COURT: What's the other one?

23 The objection is overruled. 444 and 445
 24 are admitted.

25 (State's Exhibit Nos. 444 and 445 admitted.)

1 MS. JACK: May I publish this to the Jury,
 2 Your Honor?
 3 THE COURT: Yes, you may.
 4 Q. Well, before I do that, Officer, how was it that
 5 you came to be photographing a separate victim in this
 6 case?
 7 A. The detective that's working that particular
 8 case contacted the Crime Scene sergeant and needed
 9 somebody to go and take photographs of this victim on
 10 this particular case because it was the first time we had
 11 the opportunity. He had either been in surgery or been
 12 in critical care around the clock, so this was the first
 13 time we had a chance to actually take photos.
 14 Q. So you know he was injured on June the 29th; is
 15 that right?
 16 A. Yes, ma'am.
 17 Q. And it wasn't until July the 2nd that you could
 18 actually photograph him?
 19 A. Yes, ma'am. That's the first time he was stable
 20 enough for us to enter.
 21 Q. What does that mean when you say that "he was
 22 stable enough for us to enter"?
 23 A. Basically if they have them in an area where you
 24 -- we call it "bunny suiting up" where you have to be
 25 completely covered head to toe so that you don't infect

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1 him as a result of your presence there.

2 Since our cameras and our gear and stuff
 3 go out in the field, they have the potential for
 4 infecting him. The value of the pictures over infecting
 5 him or, you know, causing him more harm is not worth
 6 the pictures, so we wait until they tell us that they
 7 have him secure from potential infection from us being
 8 there.

9 Q. Okay. So, once again, we chose -- we choose to
 10 save a life versus preserving evidence?

11 A. Yes, ma'am.

12 MS. JACK: Okay. May I publish at this
 13 time, Your Honor?

14 THE COURT: Yes, you may.

15 Q. And State's Exhibit 444, is this with
 16 Mr. Samaniego in his hospital gown?

17 A. Yes, ma'am.

18 Q. And can you see certain medical devices around
 19 Mr. Samaniego?

20 A. Yes, ma'am.

21 Q. Was Mr. Samaniego conscious when you took these
 22 pictures?

23 A. At no time while I was there.

24 Q. At no time. So he was unconscious the entire
 25 time?

1 A. Yes, ma'am.

2 Q. Now, in fairness, do you know whether or not
 3 this was medically induced or whether he had just not
 4 regained consciousness?

5 A. I do not know that.

6 Q. Okay. Now, next picture, is it a little bit
 7 graphic?

8 A. Yes, ma'am, it is.

9 Q. Okay. And can you tell the members of the Jury
 10 what they'll be seeing in State's Exhibit 445?

11 A. It's going to be that area, like I said, just
 12 below the sternum all the way down to the naval area.
 13 That area had been opened for exploratory surgery to try
 14 to get bullets, bullet fragments out and patch anything
 15 that had been done.

16 They have several things that they use now
 17 to cover those areas instead of closing them so that if
 18 they have additional problems, they can go back in. This
 19 one is actually a pretty -- a pretty good one. It's
 20 covered in a blue mesh and then it's got cellophane over
 21 it that seals that from infection.

22 So that's what you're actually going to
 23 be seeing is that packing, the mesh, and then the
 24 cellophane over the top of it. If they need to go
 25 back in, they just pull that back off instead of

1 unsuturing him.

2 Q. So actually if the bandages were off of him,
 3 the covering was off, we would actually see the true
 4 extent of his injuries?

5 A. Yes, ma'am.

6 Q. Did you return at any point to photograph
 7 Mr. Martinez later?

8 A. I don't believe I did.

9 MS. JACK: Okay. May I have a moment, Your
 10 Honor?

11 THE COURT: Yes, you may.

12 MS. JACK: I'll pass this witness for
 13 cross-examination, Your Honor.

14 MR. HEISKELL: No questions, Your Honor.

15 THE COURT: May the witness be excused?

16 MS. JACK: Yes, Your Honor. We'd ask that
 17 he be finally released.

18 THE COURT: Thank you. You may be released.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 MS. JACK: We call Arnold Dominguez.

22 May I approach the witness, Your Honor?

23 THE COURT: Please raise your right hand.

24 (Witness sworn.)

25 MS. JACK: May I proceed, Your Honor?

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1 ARNOLD DOMINGUEZ,

2 Having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. JACK:

5 Q. Mr. Dominguez, would you please tell the Jury
 6 your full name.

7 A. Arnold Dominguez, Jr.

8 Q. All right. Can you tell them where you work?

9 A. Ben E. Keith Beverages.

10 Q. Ben E. Keith Beverages?

11 A. Yes.

12 Q. How does Ben E. Keith work?

13 A. We deliver beer to the market. Pretty much
 14 there's a salesman that goes out and presells a store,
 15 and then we go out the following day and we deliver to
 16 the stores.

17 Q. Okay. How long have you worked for Ben E.
 18 Keith?

19 A. Three years.

20 Q. Before you worked for Ben E. Keith, what did you
 21 do?

22 A. I was a banker for Washington Mutual, managed a
 23 branch out in North Richland Hills.

24 Q. Before you were a banker, what did you do?

25 A. I was in the Marine Corps.

1 Q. How long were you a Marine?
 2 A. I was a Marine for three-and-a-half years.
 3 Q. Okay. Actually, you never stop being a Marine,
 4 do you?
 5 A. No, never stop.
 6 Q. All right. What year did you begin working for
 7 Ben E. Keith?
 8 A. Was it 2009, I believe.
 9 Q. Okay. And when you began to work for Ben E.
 10 Keith, what did you do for them?
 11 A. I started off as a helper. I would go out on
 12 different routes and help put up stores, down stack beer,
 13 things of that nature.
 14 Q. And do you know Ruben Martinez?
 15 A. Yes, I do.
 16 Q. How long have you known Ruben Martinez?
 17 A. Pretty much all my life, ever since we were
 18 kids. We grew up together.
 19 Q. Where did you grow up?
 20 A. In north side of Fort Worth, Diamond Hill.
 21 Q. How old are you, sir?
 22 A. 33.
 23 Q. And was Ruben Martinez 29 at the time of his
 24 death?
 25 A. Yes, he was.

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 1 it in with the branch manager -- I mean with the store
 2 manager, and then we'd put the store up in the cooler,
 3 fill the windows. And it'd usually take about an hour
 4 or so to do.
 5 Q. So you spent a lot of time together?
 6 A. Pretty much all day together we were side by
 7 side.
 8 Q. Were you good friends?
 9 A. Very good friends.
 10 Q. Did you know his wife Lisa?
 11 A. Yes, I did.
 12 Q. Had you met his son?
 13 A. Yes.
 14 Q. Did you know they were expecting another one?
 15 A. Yes.
 16 Q. Can you tell the members of the Jury what your
 17 normal route was during the week.
 18 A. We worked Monday through -- Monday through
 19 Friday. Our days would usually start about 3:30 in the
 20 morning. 4:00 in the morning we'd be at our first stop,
 21 4:15, give or take. And from that point on, it was just
 22 putting up about anywhere between 15 to 16 stops a day.
 23 Our day would usually end about 1:30 or 2. We'd have
 24 lunch for a couple hours, and then head back into the
 25 warehouse about 3:00, do paperwork, and then call it a

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 1 Q. So you were a little bit older than him growing
 2 up?
 3 A. Correct.
 4 Q. Okay. When you began to work for Ben E. Keith,
 5 did you begin to work with him?
 6 A. No. I started out on a different route, but six
 7 months later I was with him.
 8 Q. All right. When you worked with him, what would
 9 y'all do?
 10 A. We -- started off as a helper with him, and I
 11 was always side-by-side with him. We would go out and
 12 put up stores together and he would drop me off at
 13 different locations. And we'd pretty much just do the
 14 route like, you know, throughout the day.
 15 Q. So y'all would drive together?
 16 A. Drive together.
 17 Q. Both of you in the front seat?
 18 A. Correct.
 19 Q. All right. And when you say "put up a store",
 20 what does that mean?
 21 A. We'd get to a store and we'd down stack the
 22 beer, pretty much pull it off with a forklift, down
 23 stack it off, you know, on the side of the store, make
 24 it into stacks so we can roll it in with dollies. And
 25 we'd roll in the beer together at the store. We'd check

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 1 day about 3:30, 4:00 in the afternoon.
 2 Q. All right. Now, you spent a lot of time with
 3 him. I'm guessing you're familiar with his habits.
 4 A. Yes.
 5 Q. Was he on the phone a lot?
 6 A. Constantly.
 7 Q. Who was he on the phone with?
 8 A. His wife, every single stop. His wife was at
 9 home and he was on the -- on the phone just talking.
 10 Q. Were they close friends?
 11 A. Yes, very close friends. That's all he spoke
 12 of.
 13 Q. Family was important to him?
 14 A. Main priority.
 15 Q. Do you also know what he kept on him normally?
 16 A. Um, pretty much just -- being out in these small
 17 stores, we just, you know, carry very little cash on us.
 18 Carry, you know, his wallet, usually about \$10 or so.
 19 Actually, you know, a lot of these stores won't take
 20 debits unless you charge more than \$5 on a single stop,
 21 so he carried little cash, probably about \$10, wallet,
 22 cell phone. That's about it.
 23 Q. Why did you not carry very much cash?
 24 A. A, because we knew it was dangerous. They
 25 pretty much told us not to carry too much cash. B, he

1 was -- he liked to use his card a lot. You know,
 2 everybody has their own preference, but the main reason
 3 was that we didn't carry too much cash for the simple
 4 fact that we're out delivering and we didn't want to run
 5 into a problem like we did.

6 Q. Now, the two of y'all worked together for some
 7 time. Was there a time then where you got your own
 8 truck?

9 A. Yes. Usually the north side route was one of
 10 the biggest routes in the company, so we were -- we were
 11 always going with three -- two or three trucks at a time.
 12 He had a truck, I had a truck fully loaded. And so, yes,
 13 every single day we had a different truck.

14 Q. Okay. Now, even though you had different
 15 trucks, would you go to some of the same routes, run the
 16 same route together or some of the same locations
 17 together?

18 A. Yes, the big stops. We were always at the big
 19 stops together. On the north side we're -- all the
 20 stops are big. We would see each other at every single
 21 stop, because I drove the forklift truck, so we'd get to
 22 a stop and he would be waiting there for me if I was
 23 putting up another stop. And I would drop the pallets
 24 for him, down stack together and roll in. That's when
 25 the light came out. A lot of times in the morning we'd

1 like to stick together just for -- you know, we didn't
 2 want to be at one stop alone in that part of town with
 3 what could happen.

4 Q. Okay. On June the 29th, do you recall what day
 5 of the week it was?

6 A. Yes, Tuesday.

7 Q. All right. And on Tuesdays, what was the first
 8 stop?

9 A. Buy & Save, corner of Azle and Long.

10 Q. And is that 2700 Azle Avenue in Fort Worth,
 11 Texas?

12 A. Yes, it is.

13 Q. Okay. And what time would y'all generally meet
 14 up at that particular location or would you meet up at
 15 Ben E. Keith and then come there?

16 A. We would meet up at Ben E. Keith. We'd check
 17 the truck in together. Pretty much when I say "check the
 18 truck in," we'd figure out what bay was what store and we
 19 would write it down. For instance, Buy & Save was Bay 2
 20 and 3 on the driver's side. So we'd write that down so
 21 when we get there, we knew where to go to, instead of
 22 throwing up all the bays and trying to figure it out.
 23 So we'd usually get about -- there about 4:15 or so on
 24 Tuesday morning.

25 Q. Okay. And was June the 29th just like any other

1 day?

2 A. Just like any other day.

3 Q. Initially?

4 A. Yes.

5 Q. You drove one truck. Did Ruben drive another
 6 truck?

7 A. Yes.

8 Q. Now, had something happened leading up to June
 9 29th to you when you were driving one of the trucks?

10 A. Yes. The Friday before that Tuesday, I -- I
 11 jackknifed the 18-wheeler into a -- into a bridge,
 12 guardrail of a bridge. So I couldn't drive the remainder
 13 of the day on Friday, so I wasn't able to drive until
 14 Tuesday again. And Tuesday, I didn't drive the big
 15 forklift truck. He -- he drove it.

16 Q. Okay.

17 A. For me.

18 Q. What was the weather like when you jackknifed
 19 the truck?

20 A. It was raining. It was kind of misting. So
 21 driving a big truck like that, empty on the way back with
 22 a big heavy load of the forklift on the back, it's kind
 23 of hard to control if it kind of gets away from you, so
 24 you tend to slip and slide. And I, unfortunately,
 25 jackknifed the truck that Friday.

1 Q. So was your truck a particular kind of truck and
 2 his was a different kind of truck?

3 A. Correct.

4 Q. And you were supposed to be driving the truck
 5 where this happened?

6 A. That morning, yes, I was.

7 Q. What happened? Why were you not driving that
 8 truck?

9 A. Well, we finished up putting up the store, and
 10 it was starting to mist again. I had initially drove
 11 that truck that morning and parked it where it was that
 12 morning. And we came out after putting up the stop, and
 13 he -- he noticed that it was misting. And he just told
 14 me, he's like, "Hey, I know you're still kind of scared
 15 about driving the truck. I'll go and drive the truck for
 16 you, you know, this morning, and you take my truck on the
 17 other side."

18 He was in charge of the route, so, you know,
 19 there was -- you know, I said, "Are you sure?" And he
 20 said, "Yeah, I'll take one for the team," pretty much is
 21 what he said. He was like, "You go and drive the smaller
 22 truck where not -- you know, it's a lot easier to
 23 control." So...

24 Q. And you were grateful?

25 A. Yeah.

1 Q. You wanted him to drive that truck?

2 A. Yeah, definitely.

3 Q. You were still a little skittish?

4 A. Yes.

5 Q. Can you tell the members of the Jury how you
6 unloaded and when you put the -- cut the boxes up, and
7 then you went your separate ways.

8 A. Yes. We got done with the route and then we
9 pretty much break down the boxes. And we went to the
10 back of the 18-wheeler where the forklift is at. It was
11 backed up against the dumpster.

12 And that point, I just turned around and
13 threw the boxes. We talked about him taking the truck,
14 and that was it. He said, "I'll see you at the next
15 stop." And I walked one direction towards the front of
16 the store to go on the other end of the store, and he
17 walked on the other side out of sight of me to get in the
18 pass -- into the driver side of the truck.

19 Q. What happened?

20 A. As I was walking away, not even turning the
21 corner of the store, I heard a gunshot. And at the time,
22 I just -- I fell down to the ground and kind of turned
23 towards the actual pumps. And I seen people getting
24 down. There was a guy at the pump kind of ducking, you
25 know, and I was kind of crawling back towards that

1 hand underneath him, that was it. I didn't want to move
2 him or jerk him around too much.

3 Q. Was 9-1-1 called?

4 A. Yes.

5 Q. Did you call 9-1-1?

6 A. No. As I was running towards him, the store
7 owner was coming out at the same time. And I yelled at
8 him, "Call 9-1-1". He had his phone with him already,
9 and he called. And then -- but no, I didn't. My first
10 call wasn't to 9-1-1.

11 Q. Did you stay there with Ruben?

12 A. Yes, I did.

13 Q. Were you there when MedStar got there?

14 A. Yes.

15 Q. Were you there when they took him to the
16 hospital?

17 A. Yes.

18 Q. Did you go and visit him at the hospital?

19 A. Every day.

20 Q. Were there days that you went more than once?

21 A. Almost every day.

22 Q. From the last time that he told you, "I'll see
23 you at the next stop", was he ever able to speak to you
24 again?

25 A. No.

1 direction. And I yelled out at the guy, I said, "What's
2 going on? You know, what was that?" And he pretty much
3 just turned to me and said, "I don't know, but there's
4 somebody in the front of the truck."

5 And that's when I ran towards the front of
6 the truck, and I seen Ruben lying there next to the curb.

7 Q. What did he look like?

8 A. Not moving, eyes were just a blank stare, just
9 blood coming out of -- side of his head. I didn't know
10 if it was -- he had gotten shot in the head or where, but
11 it was just pretty much everywhere.

12 Q. Was he face up or face down?

13 A. Face down on his stomach.

14 Q. Could he move?

15 A. No.

16 Q. Was he conscious?

17 A. No.

18 Q. Were his eyes open?

19 A. Yes.

20 Q. Were you trying to talk to him?

21 A. Yes. I put my hands underneath him and tried
22 to hold him to see if I can feel something, and there
23 was nothing.

24 Q. Were you able to move him?

25 A. No, I mean, pretty much just by me putting my

1 Q. How was he able to communicate?

2 A. We would spend hours with him at the -- at the
3 hospital, and myself, his wife, and one other guy from
4 work, and we would sit there and go through the entire
5 alphabet, because we knew he was trying to speak to us.
6 And we'd, you know, name out a letter, like A, "Does it
7 start with A? And blink once if yes; blink twice if
8 no." So that's how he would spell out what he -- what
9 he wanted to tell us.

10 Q. How long would it take him to tell you, for
11 instance, he was hot or needed help?

12 A. Two hours at least. He would get frustrated
13 because we couldn't -- he would get tired. He was dozing
14 in and out, but about two hours or so just to get a
15 simple "I'm hot."

16 Q. What's the last thing he told you or
17 communicated to you?

18 A. From the hospital was "I'm hot" pretty much is
19 what he told me. That was the only thing we made out.

20 Q. Is that the same way he could communicate with
21 his family?

22 A. I think so. That's -- that's the only way he
23 could communicate with his family. I know when I was
24 there, that was what we would try to get out of him.

25 Q. Was he ever able to move?

1 A. No.
 2 MS. JACK: May I approach the witness, Your
 3 Honor?
 4 THE COURT: Yes, you may.
 5 Q. Mr. Dominguez, I'm showing you what's been
 6 marked as State's Exhibit 442 for identification
 7 purposes. Do you recognize what's portrayed in this
 8 picture?
 9 A. Yes.
 10 Q. Does that fairly and accurately show Ruben
 11 Martinez in the hospital in the days leading up to his
 12 death?
 13 A. Yes.
 14 MS. JACK: Your Honor, at this time, the
 15 State would offer State's Exhibit 442 into evidence for
 16 all purposes.
 17 MR. HEISKELL: No objection.
 18 THE COURT: Admitted.
 19 (State's Exhibit No. 442 admitted.)
 20 MS. JACK: May I publish it, Your Honor?
 21 THE COURT: Yes.
 22 Q. (BY MS. JACK) Mr. Dominguez, have you had an
 23 opportunity to watch the surveillance video from the
 24 Texaco?
 25 A. Yes.

1 A. Back towards the individual.
 2 Q. So it's behind you?
 3 A. Uh-huh.
 4 Q. Did you ever know how close you were to Mark
 5 Soliz?
 6 A. Never had any idea until I seen the video.
 7 Q. Okay. After you saw that individual walk behind
 8 you, was he walking towards where your friend was?
 9 A. Right behind.
 10 Q. Was your friend ever the same again?
 11 A. No.
 12 MS. JACK: Your Honor, at this time, the
 13 State would offer the video footage from Camera 9 on
 14 State's Exhibit 443 into evidence.
 15 MR. HEISKELL: No objection.
 16 THE COURT: Admitted.
 17 (State's Exhibit No. 443 admitted.)
 18 MS. JACK: May I play it, Your Honor?
 19 THE COURT: Yes, you may.
 20 MS. JACK: It may take me a few minutes to
 21 set it up.
 22 THE COURT: That's fine.
 23 (Pause in proceeding.)
 24 MS. JACK: Judge, we may need a few minutes,
 25 based upon the player.

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1 Q. And you knew that they had cameras at the store?
 2 A. I did.
 3 Q. All right. And specifically Camera No. 9, the
 4 video that's captured on that, does that fairly and
 5 accurately show looking across the profile of the store,
 6 the Texaco there on June the 29th of 2010?
 7 A. Yes.
 8 Q. Does it fairly and accurately show the events,
 9 you and Ruben unloading the beer boxes, you and Ruben
 10 unloading, making deliveries inside of the store,
 11 returning to the truck, that type of thing?
 12 A. Yes.
 13 Q. All right. Have you had a chance to watch that?
 14 A. Yes, I have.
 15 Q. Do you see an individual come out of the shadows
 16 by the dumpster?
 17 A. Yes, I do.
 18 Q. And does that individual come out near where the
 19 dumpster is?
 20 A. Yes.
 21 Q. Does it appear as though he has something in his
 22 hand?
 23 A. Yes.
 24 Q. And are you facing him or is your back to the
 25 individual as he comes out from the dumpster?

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1 (Pause in proceeding.)
 2 MS. JACK: Judge, may we change laptops for
 3 just a moment?
 4 THE COURT: Okay.
 5 (Pause in proceeding.)
 6 MR. CHAMBLESS: Your Honor, may we approach
 7 the bench?
 8 THE COURT: Yes, you may.
 9 (At the bench.)
 10 MR. CHAMBLESS: If you could give us five
 11 minutes recess, we'll get this done.
 12 THE COURT: They've got it already running,
 13 don't they?
 14 (In open court.)
 15 THE COURT: We'll take a short recess.
 16 (Recess taken from 11:14 to 11:34 a.m.)
 17 (Jury not present.)
 18 THE COURT: State ready to proceed?
 19 MS. JACK: State's ready.
 20 THE COURT: Defense ready?
 21 MR. HEISKELL: Yes, sir.
 22 THE COURT: Jury ready? Please bring in the
 23 jury.
 24 (Jury present.)
 25 THE COURT: Thank you. You may be seated.

1 MS. JACK: At this time, Your Honor, I will
 2 also offer the video footage from Camera 7 and Camera 8
 3 as well.

4 MR. HEISKELL: No objection, Your Honor.

5 THE COURT: How are those marked?

6 MS. JACK: Now, Mr. Dominguez --

7 I'm sorry, Your Honor?

8 THE COURT: How are those marked?

9 MS. JACK: They're also on the same CD.

10 THE COURT: Which is marked as State's
 11 what?

12 MS. JACK: It's in the player.

13 MR. HEISKELL: 443, I believe.

14 THE COURT: Thank you. Go ahead.

15 Q. (BY MS. JACK) Mr. Dominguez, the time indicated
 16 on this footage indicates 6:45 down there at the bottom.
 17 What time are y'all actually at the Texaco?

18 A. We got there about 4:30. That's probably about
 19 5 something, 5:15 or so, 5:30.

20 Q. So it's about an hour fast?

21 A. Right, right.

22 Q. So they didn't adjust for Daylight Savings?

23 A. Right.

24 Q. Okay. All right. But other than that,
 25 everything is a fair and accurate portrayal of what

1 happened that morning?

2 A. Correct.

3 Q. Okay. The video clip that you've watched is
 4 much longer; is that right?

5 A. Yes.

6 Q. For purposes of the Jury's sake, we're going to
 7 just show a shortened part of that clip. All right?

8 A. Okay.

9 (A portion of State's Exhibit No. 443,
 10 DVD with no audio, played simultaneously
 11 in open court.)

12 Q. Now, do you see the individual that just -- did
 13 you see the man come out of the shadows?

14 A. Yes, I did.

15 Q. Okay. And what would that area have been?

16 A. That's where the dumpster is at.

17 Q. Does it appear as though he has white tennis
 18 shoes or light-colored shoes?

19 A. Yes, it does.

20 Q. And a light-colored shirt?

21 A. Yes.

22 Q. And he just went back to that area?

23 A. Yes.

24 Q. Who is that?

25 A. That's Ruben.

1 Q. Who is the second gentleman out of the store?

2 A. That's me.

3 Q. All right. And are y'all wearing your uniforms?

4 A. Yes, we are.

5 Q. What are you getting ready to do?

6 A. We're going to go back to that -- where the
 7 dumpster is at, throw away the boxes that we have broken
 8 down that are on my dolly.

9 Q. Do y'all use knives to break down the boxes
 10 sometimes and cut up the trash?

11 A. Yes, yes, we do.

12 Q. And you look as though, for just a moment, as
 13 though you were looking around. Had you and Ruben heard
 14 anything that morning?

15 A. That morning we did. When we first showed up to
 16 the stop and we were down stacking one of the pallets
 17 that we had pulled off the truck, we had heard gunshots
 18 in the area. And pretty much just heard them and went on
 19 in our business.

20 Q. Want to be careful?

21 A. Yeah.

22 Q. What are you doing right there?

23 A. I am going to put the dollies on the back of
 24 the truck.

25 Q. And what's Ruben doing?

1 A. Ruben is throwing away the trash.

2 Q. In what?

3 A. The dumpster.

4 Q. Did you ever know anyone was behind you?

5 A. No, no idea.

6 Q. Mr. Dominguez, can you see the two light-colored
 7 areas at the very top of the screen?

8 A. On the right side? Yes, I do.

9 Q. From what you know, is that the area consistent
 10 with or the same area as the vacant field adjacent to the
 11 Texaco?

12 A. Yes.

13 Q. And this camera footage does not show you, but
 14 what were you doing at this very moment?

15 A. I was running towards the front of the truck to
 16 find Ruben where he was laying down, lying.

17 Q. And does one of the other views show, in fact,
 18 the young man in the red truck or the red car that ducked
 19 at the sound of the gunfire?

20 A. Yes.

21 Q. You knew Ruben. Was he a healthy man?

22 A. He was.

23 Q. Was he a young man?

24 A. He was.

25 Q. Any reason to believe he wouldn't have lived a

1 long, happy life but for June 29th and this Defendant?

2 A. No reason.

3 MS. JACK: I'll pass this witness.

4 MR. HEISKELL: No questions. No questions,
5 Judge.

6 THE COURT: May the witness be excused?

7 MS. JACK: Yes, Your Honor. We'd ask that
8 he be finally released.

9 THE COURT: Thank you. You may be excused.
10 (Witness excused.)

11 THE COURT: Any objection to recessing for
12 lunch?

13 MS. JACK: No, Your Honor.

14 MR. HEISKELL: No, Your Honor.

15 THE COURT: Recess for lunch. Be back at
16 1:15.

17 (Recess taken from 11:41 a.m. to 1:14 p.m.)
18 (Jury not present.)

19 THE COURT: State ready to proceed?

20 MS. JACK: State is ready, Your Honor.

21 THE COURT: Defense ready?

22 MR. HEISKELL: Yes.

23 THE COURT: Defendant here. Jury ready?

24 Please bring in the Jury.

25 (Jury present.)

1 Association at the University of Indianapolis. It
2 consisted of four courses, each one of them a week long,
3 and each one of them has a test at the end. And it --
4 the first one was Basic Forensic Video Analysis and the
5 Law. Excuse me. It deals with basically how video
6 works, how your VCR gets images from a tape, and how
7 these things are used in a courtroom setting or in a
8 trial setting.

9 The second course is Intermediate Forensic
10 Video Analysis and the Law, and that entails digital
11 stuff, or excuse me, digital evidence, media like a DVR
12 which is like you see in a security video setting that
13 you see in stores when you go in there. That's all
14 digital-based. It's ones and zeros.

15 And in that course, what you have to do is
16 you have to learn about how a DVR functions, how the DVR
17 puts information -- it takes information from the cameras
18 and puts it on a hard drive of the machine, and what
19 software and codecs -- little magic decoder rings -- it
20 takes to play that software back if you export out that
21 video off the machine.

22 The third one is Advanced Forensic Video
23 Analysis and the Law. And basically it's just a
24 compilation of the first two courses. What we do is
25 we -- they assign the students a mock case. You'll get

1 THE COURT: Thank you. Be seated.

2 MS. JACK: We call Mark Porter, Your Honor.

3 THE COURT: Please raise your right hand.

4 (Witness sworn.)

5 MS. JACK: May I proceed, Your Honor?

6 THE COURT: Yes, ma'am.

7 MARK PORTER,

8 Having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. JACK:

11 Q. Mr. Porter, would you please introduce yourself
12 to the ladies and gentlemen of the Jury.

13 A. My name is Mark Porter.

14 Q. And can you please tell them how you're
15 employed.

16 A. I'm a forensic video analyst for the Tarrant
17 County District Attorney's Office.

18 Q. So you work for the Tarrant County D.A.'s
19 Office?

20 A. Yes, ma'am.

21 Q. All right. Can you tell the members of the
22 Jury your educational background that qualifies you to
23 do forensic video analysis.

24 A. I attended courses put on through LEVA, which is
25 the Law Enforcement and Emergency Services Video

1 case, basically, evidence, video footage, and you have to
2 prepare that as if it's going to trial, and you have to
3 defend it in a moot court, which the -- basically the
4 instructors of the course will grill you like we're in a
5 courtroom setting such as this. And in addition to
6 that, you have practical exercises, hands-on exercises
7 that you do during the entire week that you have to turn
8 in and show proficiency that you understand the
9 methodologies and things like that to actually present a
10 case in court.

11 The last is Photographic Video Comparison.
12 And that entails taking known images of something like an
13 individual or a vehicle or an object, like a patterned
14 piece of clothing, and in an image, a still image, and
15 comparing it to video footage that you may have of an
16 unknown object. And then you have to assign or you have
17 to look for class characteristics, which, is it a white
18 truck, yes, is it a Ford truck, yes. And then you --
19 once you catalog, write all those down, you start looking
20 for specific, which are unique characteristics; does it
21 have a dent, you know, in the back quarter panel or is
22 there damage to the windshield, and items of that nature.

23 Q. How long have you been doing forensic video
24 analysis for the Tarrant County District Attorney's
25 office?

1 A. I've been doing forensic video analysis since
2 2006.

3 Q. Okay. Can you tell the Jury what kind of tools
4 you have that enable you to do your analysis?

5 A. We use a variety of tools. We use software
6 tools which are programs that we use. We use hardware
7 tools which is an Avid, spelled A-V-I-D. It's a video
8 system. It's the same system that you use in broadcast
9 television to put TV shows on the air. They have a
10 specific set of filters or software application that's
11 used in our line of work to clarify images on video, to
12 stabilize video that's jumpy and things of that nature.

13 Q. Have you testified as an expert before in the
14 area of forensic video analysis?

15 A. Yes, I have.

16 Q. On few or several occasions?

17 A. Several occasions.

18 Q. Have you testified as an expert in this area in
19 Tarrant County?

20 A. Yes, ma'am.

21 Q. Has your expertise been limited to Tarrant
22 County or have you testified -- testified outside of
23 Tarrant County as an expert in forensic video analysis?

24 A. I have testified outside of Tarrant County as
25 an expert.

1 as far north as Oklahoma?

2 A. Yes, ma'am, I assisted the Norman Police
3 Department with an investigation in the last three weeks.
4 Q. Okay. Have you also been called by defense
5 attorneys to testify as an expert in the area of forensic
6 video analysis?

7 A. Yes, ma'am, I have.

8 MS. JACK: May I approach the witness, Your
9 Honor?

10 THE COURT: Yes, ma'am.

11 Q. Mr. Porter, I'm showing you what's been admitted
12 into evidence as State's Exhibit 443. Do you recognize
13 this exhibit?

14 A. Yes, I do.

15 Q. How do you recognize it?

16 A. It's -- it's a DVD disk. It has our lab label
17 attached to the top as well as has my initials M.P. and a
18 date.

19 Q. Okay. Now, when you say "our label", what label
20 is that specifically?

21 A. It's the Tarrant County Criminal District
22 Attorney's Office.

23 Q. Okay. So when you make a working copy or an --
24 a duplicate copy of a video that the Fort Worth Police
25 Department has obtained and you conduct video forensic

1 Q. All right. Can you tell the members of the Jury
2 the different counties where you have testified.

3 A. I've testified in Potter County, which is
4 Amarillo which is up in the Panhandle; Lubbock County,
5 which encompasses the city of Lubbock; and Bexar County,
6 which is where San Antonio is located.

7 Q. And as a part of or as the head of the Forensic
8 Video Analysis Unit in the District Attorney's Office, do
9 you assist or work with police agencies?

10 A. Yes, ma'am, all -- all the time.

11 Q. Okay. And does that include all of the agencies
12 within Tarrant County?

13 A. Yes. At one point or another it -- just about
14 all of the municipalities came -- have come to me for
15 assistance.

16 Q. Okay. Do you also help agencies outside of
17 Tarrant County?

18 A. Yes, ma'am.

19 Q. Can you tell the members of the Jury what
20 agencies you've assisted outside of Tarrant County.

21 A. I've assisted Denton County District Attorney's
22 Office, the Denton County Sheriff's Department, Flower
23 Mound and Collin County, Plano Police Department, as well
24 as Burleson and Cleburne here in Johnson County.

25 Q. Okay. And have you also assisted with agencies

1 analysis, do you label it with the Tarrant County
2 District Attorney's Office label?

3 A. Yes, I do.

4 Q. Okay. Are you familiar with the footage that is
5 on State's Exhibit 443?

6 A. Yes, ma'am.

7 Q. And, specifically, I am referring to the footage
8 from Cameras 7, 8 and 9.

9 A. Yes, ma'am.

10 Q. And can you tell the members of the Jury what
11 each of those, what each of the footages from those
12 cameras show?

13 A. Camera number -- they're a little bit out of
14 order, but Camera No. 8 is a camera that's located what
15 would be on the west side of the business looking south.
16 And it's located up high and it overlooks an area that
17 it's like a drive-up window where people in -- can walk
18 up or people can drive up in cars and get merchandise
19 from the store.

20 Q. It's a drive-through window?

21 A. Yes, ma'am.

22 Q. All right. Camera 8, what does Camera 8 show?

23 A. That was Camera 8.

24 Q. Okay. What does Camera 7 show?

25 A. I'm sorry. Camera 7 is basically an overview of

1 the parking lot that shows the front parking lot of the
 2 business.

3 Q. Okay.

4 A. And -- I'm sorry.

5 Q. What does Camera 9 show?

6 A. Camera 9 is a camera that's located on the
 7 corner of the building and looks basically parallel
 8 or straight down the front of the business. You catch
 9 a little bit of the parking spaces that are at the very
 10 front of the store, but it's mainly the front store, the
 11 sidewalk area.

12 Q. Okay. Now, when you received that disk or that
 13 DVD, did you prepare a shorter version of the video
 14 footage of those three cameras in connection with this
 15 case?

16 A. Yes, ma'am, I did.

17 Q. All right. Now, can you tell the Jury how you
 18 went about doing that?

19 A. What I did is I used a software tool that I
 20 have. It's called "DVR dCoder". I opened up the player
 21 software that came from the DVR that had the camera
 22 images in it, and used that software to capture the
 23 images as they were playing in the player and exported
 24 them out in a QuickTime movie format.

25 Q. Okay. Now, are there certain things that you

1 we have covered everything in its totality.

2 Q. Does it give you a point at which you can work
 3 backwards then?

4 A. Yes, ma'am, it does.

5 Q. Okay. Now, you had the ending time, and what
 6 was the ending time according to the video where the
 7 individual ducked down?

8 A. It was on -- according to the time stamp on the
 9 video, it was 6:47 a.m.

10 Q. All right. And you understand that the video
 11 footage is actually roughly about an hour fast?

12 A. Yes, ma'am, I do.

13 Q. Okay. So what time in real time would that
 14 individual have ducked down?

15 A. Can I refer to my notes?

16 Q. Certainly.

17 A. In real time, that would have occurred at
 18 approximately 5:50 a.m.

19 Q. All right. So when you're working backwards
 20 then, what do you look for?

21 A. I look for a continuation of actions or items
 22 that I see from that ending point.

23 Q. Okay. And was it your understanding that a
 24 Dodge Stratus was driven throughout this crime spree?

25 A. Yes, ma'am.

102 1 look at to know, for instance, the time of an event?

2 A. Yes, ma'am.

3 Q. What, in this case, did you look for in terms of
 4 the timing of an event?

5 A. I looked for the arrival of a Dodge Stratus or a
 6 vehicle that came onto the property.

7 Q. Okay. Now, did you also look at an ending time?

8 A. Yes, ma'am, I did.

9 Q. All right. And what event told -- what time or
 10 what event signaled the end of the crime?

11 A. The end of the event was indicated to me by some
 12 reactions of patrons in the store parking lot.

13 Q. Okay. And what were they doing?

14 A. They -- one patron looked towards the Budweiser
 15 truck. Another patron that was away from him at the fuel
 16 pumps actually ducks down at a certain point.

17 Q. Consistent with someone just having heard a
 18 gunshot?

19 A. Yes, ma'am.

20 Q. Now, as a video analyst, why is the ending time
 21 important?

22 A. I need to ensure that I have the -- the entire
 23 scope of the event captured so we can do our analysis on
 24 it. We don't want to leave any events off of our
 25 finished product or off of our product to make sure that

104 1 Q. Were you able to locate what appeared to be a
 2 Dodge Stratus on one of the camera footages?

3 A. Yes, ma'am.

4 Q. Okay. And can you tell the members of the Jury
 5 where you first saw what appeared to be a Dodge Stratus?

6 A. I first saw what appeared to be a Dodge Stratus
 7 at the point where the vehicle had pulled up to the
 8 drive-through window and then proceeded, after sitting at
 9 the drive-through window for a short period of time,
 10 proceeded through the parking lot into the different
 11 camera view that had significantly better lighting
 12 conditions.

13 Q. Okay. So you see the one camera view in the
 14 drive-through; is that correct?

15 A. Yes, ma'am.

16 Q. Then you see a different camera footage where
 17 the Dodge Stratus is captured in the parking lot of the
 18 Texaco; is that right?

19 A. That's -- that's correct.

20 Q. What time did you first see the car in the
 21 drive-up window?

22 A. At --

23 Q. According to the video.

24 A. According to the video, it would be 6:29 and 7
 25 seconds.

1 Q. Okay. In real time, what time did the car drive
2 up to the video?

3 A. That would be 5:32 and 7 seconds.

4 Q. Okay. And what time did the car drive to or
5 towards the front of the business and in the larger area
6 of the parking lot?

7 A. The time stamp, according to the video, it would
8 be 6:30 and 38 seconds.

9 Q. And what time in real time was that?

10 A. In real time, that would be 5:33 and 38 seconds.

11 Q. Can you tell the Jury what you saw the car do?

12 A. The car proceeded from the drive-through area
13 across the parking lot and appeared to stop in close
14 proximity to the Budweiser truck, towards the front of
15 the Budweiser truck.

16 Q. What did the truck do -- sorry. What did the
17 car do next?

18 A. The car then proceeded to turn right out onto
19 the street and proceed over to the stoplight to the left
20 turn lane and sat there. I couldn't see the traffic
21 signal, but it sat in the left turn lane for a few
22 seconds. And the it made a U-turn and went back
23 eastbound on the street and disappeared from camera view.

24 Q. Okay. And the Jury has already heard the
25 confession by Mr. Soliz. And if it indicated or if he

1 told the police that they made the block after seeing the
2 truck, that would be consistent, wouldn't it?

3 A. Yes, ma'am.

4 Q. All right. What is the next thing that you saw?

5 A. I observed two areas of light-colored pixels in
6 the dark or the area between the rear of the Budweiser
7 truck and the front of the store appeared to come towards
8 the camera.

9 Q. And you're familiar with that area, are you not?

10 A. Yes, ma'am.

11 Q. Okay. And the area where you see the two
12 light-colored pixels, would that be consistent with or in
13 the same location as the vacant field?

14 A. Yes, ma'am, it would.

15 Q. Okay. And about what time do you see those two
16 light-colored pixels coming through the vacant field?

17 A. Approximately 6:33.

18 Q. Okay. And what time in real time was that?

19 A. That would be 5:36 a.m.

20 Q. All right. And what do you see the two
21 light-colored pixels do then?

22 A. What I observed at -- what I saw the two
23 groups of light-colored pixels do, they come towards the
24 camera. They get closer to the camera. One group of
25 light-colored pixels will move towards the rear of the

1 Budweiser truck. The other light-colored group of pixels
2 appears to move towards the top of the video, the frame,
3 as if they were moving away from the camera.

4 Q. Okay. And we've called them light-colored
5 pixels. Is there such a thing -- I'm trying to think of
6 the right word, "noise" or "artifacts" --

7 A. Yes, there --

8 Q. -- on the video?

9 A. Yes, there -- there are -- there are artifacts
10 that are compression artifacts in the -- present in this
11 video, yes.

12 Q. These two light-colored pixels, are they
13 artifacts?

14 A. No, ma'am, they are not.

15 Q. How do you tell the difference between what is
16 an artifact and what is actually something moving or
17 something happening?

18 A. What I do is I -- when I'm observing the video,
19 I look at the compression artifacts that tend to move
20 back and forth, in this instance in a horizontal or a
21 side-to-side motion.

22 These two light groups of pixels move in a
23 different fashion. They move from top to bottom, and at
24 one point they kind of move in a diagonal direction as
25 well.

106 1 Q. Okay. So if something is an artifact or noise,
2 do they move in a different way?

3 A. They -- you have to watch it from frame to frame
4 over time to see what the motion is of those artifacts.

5 Q. Okay. So could you tell whether the pixels were
6 artifacts or were, in fact, something really happening?

7 A. I -- I could tell that there was -- there was --
8 there were objects moving within the field of view.

9 Q. Okay. When you see those artifacts, do they
10 come through the field?

11 A. They come through the field towards -- or they
12 actually get closer to where the camera is located.

13 Q. And one of the lighter pixel areas, does it go
14 towards what you know to be the dumpster area?

15 A. Yes, ma'am, it does.

16 Q. Does the other pixilated area go towards what
17 you know to be the telephone?

18 A. Yes, ma'am.

19 Q. Pay phone, not telephone. Pay phone?

20 A. Yes, ma'am, it does.

21 Q. And the lighter pixel area, at some point do you
22 see an individual come from the shadows?

23 A. In what area?

24 Q. The dumpster area.

25 A. Yes, ma'am, I do.

1 Q. About what time do you see that?
 2 A. Approximately 6:45 a.m.
 3 Q. Okay.
 4 A. And that would be 5:48 a.m. in real time.
 5 Q. Okay. And did you take the three camera
 6 footages from 7, 8 and 9 and edit them to make one
 7 shorter film for the Jury to see?

8 A. Yes, I did.
 9 Q. And what does this edited film show?
 10 A. It basically shows the progression from when
 11 the vehicle arrives onto the property, as the vehicle
 12 drives through the parking lot, out into the street,
 13 makes the U-turn and goes out of camera view. And then
 14 it shows the light area of pixels approaching the camera,
 15 moving towards the dumpster area, towards the front of
 16 the truck, as well as an individual later in time coming
 17 from that dumpster area towards a vehicle located in the
 18 parking lot as well as going towards the front of the
 19 truck later on.

20 Q. Okay. And the video that you've prepared, is it
 21 the exact copy of each of those clips but a shorter
 22 version?

23 A. Yes, ma'am, it is.

24 Q. In other words, there's not 40 minutes of
 25 Camera 7 followed by 40 minutes of Camera 8 followed by

1 the State would offer State's Exhibit 482 into evidence
 2 for all purposes.

3 MR. HEISKELL: No objection, Your Honor.
 4 THE COURT: Admitted.
 5 (State's Exhibit No. 482 admitted.)
 6 MS. JACK: Okay. May I publish it at this
 7 time, Your Honor?

8 THE COURT: Yes, ma'am.
 9 MS. JACK: May I have this witness publish
 10 it, in fact?

11 THE COURT: Yes. Does he need to do that
 12 over there?

13 MS. JACK: He's already got the cord set up.
 14 THE COURT: Okay. Yes.
 15 THE WITNESS: Your Honor, can I have the
 16 lights dimmed a little bit, please?

17 Q. (BY MS. JACK) And, Mr. Porter, as we're going
 18 through this video, if you will stop and point out to the
 19 Jury different observations that you made.

20 A. Yes, ma'am.
 21 (State's Exhibit No. 482, DVD with no audio,
 22 playing simultaneously in open court.)

23 Q. Which view is this, Mr. Porter?
 24 A. This is Camera No. 8. This is located at the
 25 drive-through window area.

1 40 minutes of Camera 9?

2 A. That is correct.

3 Q. And, Mr. Porter, can you please tell the Jury
 4 from the time that the pixilated areas come through the
 5 vacant field until the time that you see the individual
 6 walk towards the end of the Budweiser truck, how long
 7 that took.

8 A. It took approximately 16 minute -- or excuse
 9 me -- 13 minutes.

10 Q. 13 minutes he laid in wait?

11 A. Yes, ma'am.

12 MS. JACK: May I approach this witness, Your
 13 Honor?

14 THE COURT: Yes, ma'am.

15 Q. Mr. Porter, I'm showing you what's been marked
 16 for identification purposes as State's Exhibit 482. Do
 17 you recognize this?

18 A. Yes, I do.

19 Q. How do you recognize it?

20 A. It has my handwriting on it as well as my
 21 initials.

22 Q. Okay. And is that the video you've prepared in
 23 connection with your testimony today?

24 A. Yes, ma'am, it is.

25 MS. JACK: Okay. Your Honor, at this time,

1 Q. Mr. Porter, if you can, go ahead and
 2 fast-forward it to the starting point.

3 A. Okay. This is the --

4 THE WITNESS: May I stand?
 5 THE COURT: Yes.

6 A. Yes. This is the car, the vehicle located in
 7 the area of the drive-through window at the business.

8 Q. Are those the gas pumps we see in the middle at
 9 the top of the screen?

10 A. Yes, ma'am, this is the fuel -- the fuel pumps,
 11 the gas pumps in the front of the business.

12 MS. JACK: If it would be easier just to
 13 let it play, that will be fine.

14 THE WITNESS: Well, it appears to be frozen.
 15 (Pause in proceeding.)

16 THE WITNESS: Let me back up.

17 The video appears not to be playing for some
 18 reason. I have a copy of this footage on my --

19 MS. JACK: You can play it from the hard
 20 drive.

21 THE WITNESS: -- on my hard drive.

22 MS. JACK: Is it the exact same copy?

23 THE WITNESS: Yes, ma'am, it is.

24 MS. JACK: Okay.

25 (Pause in proceeding.)

1 A. The car will proceed to the front of the
2 business; that will switch to Camera No. 7.

3 Q. And what do we see in the far left-hand corner
4 of the screen?

5 A. That is the -- the cab of the tractor area of
6 the Budweiser vehicle. The car will proceed to the
7 right-hand portion of the image and you'll see it stop.
8 You'll see the taillights in this area here.

9 Q. How can you tell it does a U-turn?

10 A. I observed the vehicle after it proceeds
11 forward. You'll see the lights reflecting on the area of
12 the ground beside the building across the street.

13 Q. Would those be the headlights?

14 A. Yes, ma'am, the headlights.

15 It switches to Camera No. 9. At 6:33 and
16 12 seconds by the clock indicated, you'll see two light
17 areas approach in this area.

18 Q. Can you see them now?

19 A. Yes, right there. Now they're separated. There
20 is one right there.

21 Q. And the other one went in the direction of the
22 pay phones?

23 A. Yes, ma'am, he proceeded behind the truck out
24 of camera view.

25 Q. Can we still see the one individual?

1 publish the whole thing. I was trying to save the Jury
2 some time.

3 THE COURT: Publish the whole video --
4 MS. JACK: I can do so --

5 THE COURT: -- and then if you want to go
6 back and ask questions about the video, then you may
7 proceed along those lines.

8 MS. JACK: That's fine.

9 Mr. Porter, will you please start at the
10 beginning.

11 THE WITNESS: Yes, ma'am.

12 (State's Exhibit No. 482, DVD with no audio,
13 played in open court.)

14 THE WITNESS: That's the end.

15 Q. (BY MS. JACK) Mr. Porter, on which camera
16 footage is it with the gas pump in?

17 A. That would be Camera No. 7.

18 Q. Okay. Earlier in the film or earlier in the
19 video, could you see a police car driving by?

20 A. Yes, I did.

21 Q. As the police car is driving by, was that before
22 the shooting at the Texaco?

23 A. Yes, ma'am, it was.

24 Q. Would the police car have driven by the same
25 area where Ruben Martinez, Jose Ramos, and Mark Soliz

114 116
1 A. No, ma'am, not at this point. At 6:33:47 you
2 will see the light area proceed towards the camera view
3 right here.

4 Q. And did he walk in the direction of the
5 dumpsters?

6 A. Yes, ma'am, he did. Do you want me to
7 fast-forward to the next event?

8 Q. Yes, please.

9 Mr. Porter, will you hold on for just a
10 moment, please. Did you see the individual ever come out
11 from the dumpster in that entire time?

12 A. Not up until this point. I did not see that
13 individual come into camera view from that area.

14 Q. Okay.

15 MR. WESTFALL: Your Honor, the video really
16 would be the best evidence of what's seen on the video.
17 Instead of taking a shortcut and just narrating it, we'd
18 ask the video just be played, Your Honor.

19 THE COURT: You want it played full, full
20 stop?

21 MR. WESTFALL: Well, I mean, as opposed to
22 fast-forwarding through a part and then telling the Jury
23 what they could have seen if they had been watching the
24 video, or not seen, quite frankly.

25 MS. JACK: Judge, I'm -- I'm happy to

1 were?

2 A. Yes.

3 Q. Roughly the same time?

4 A. Approximately, yes.

5 Q. Okay. Mr. Porter, did you prepare a number of
6 stills or take a number of stills from this video
7 footage?

8 A. Yes, I did.

9 Q. And do these stills fairly and accurately -- are
10 they actual stills from the video footage?

11 A. Yes, ma'am, they are.

12 Q. I'm showing you what's been marked for
13 identification purposes as State's Exhibit 483 and 484.
14 Do you recognize both of these exhibits?

15 A. Yes, I do.

16 Q. Okay. And State's Exhibit 483, does it contain
17 eight stills showing the Dodge Stratus at the Texaco?

18 A. Yes, ma'am, it does.

19 Q. And are those exact copies or are those stills
20 from the actual footage that's already in evidence?

21 A. Yes, ma'am, they are.

22 Q. All right. And State's Exhibit 483, did you
23 indicate where the Dodge Stratus was in the Still No. 1,
24 Still No. 4, Still No. 5, 6, 7 and 8?

25 A. I can't actually see the stills.

1 Q. I'm sorry.
 2 A. I indicated with an orange circle in Still
 3 No. 1, Still No. 4, Still No. 5, and Still No. 8.
 4 Q. Okay.
 5 A. Excuse me. I also -- in Still No. -- actually
 6 in 6 and 7 as well. You were blocking them. I'm sorry.
 7 Q. I'm sorry. Now that you can see them?
 8 A. Yes, ma'am.
 9 Q. Did you indicate where the Dodge Stratus was in
 10 each of these pictures?
 11 A. Yes, ma'am, I did.
 12 Q. Now, State's Exhibit 484, does it contain 12
 13 stills taken from the footage that indicate where the two
 14 lighter-colored pixilated areas are coming through the
 15 field?
 16 A. Yes, it does.
 17 Q. And that's 1, Still No. 1. Still No. 2, does it
 18 indicate where the pixels separate?
 19 A. Yes.
 20 Q. And Still No. 3, is it a couple of frames after
 21 Still No. 2?
 22 A. Yes, ma'am.
 23 Q. Okay. And Still No. 4, is it a couple of frames
 24 after Still No. 3? In other words, these are in
 25 succession; is that correct?

1 brought those up. So I made the darks a little darker
 2 and the lights a little bit lighter.
 3 Q. Okay. So, for instance, if we were to turn off
 4 the lights in this courtroom, would it be like you moved
 5 the furniture around or would it be like you just turned
 6 the lights on?
 7 A. No, ma'am. I just -- didn't -- that's all I
 8 did is I clarified the image. I came in and turned
 9 the lights on so you could see the details more
 10 easily.
 11 Q. Okay. And is this type of process something
 12 that is accepted within the scientific community, the
 13 community of forensic video analysis?
 14 A. Yes, ma'am, it is.
 15 Q. Whether we're talking about the FBI, whether
 16 we're talking about the Tarrant County District
 17 Attorney's Office?
 18 A. Yes, ma'am.
 19 Q. Okay. And are there a number of types of
 20 filters?
 21 A. Yes, there are quite a few.
 22 Q. Much more complicated, much more sophisticated?
 23 A. Yes, ma'am.
 24 Q. Okay. So this is a basic filter?
 25 A. Yes, ma'am, it is.

1 A. That is correct.
 2 Q. And have you indicated by an arrow on Still
 3 No. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, and 12, when you see
 4 the pixilated area and when you see the individuals, did
 5 you mark those with an orange arrow?
 6 A. Yes, I did.
 7 Q. And did you indicate the second pixilated area
 8 in Still No. 1 and Still No. 12 with a green arrow?
 9 A. Yes, I did.
 10 Q. Okay. Now, with regard to Stills No. 1 through
 11 4 on State's Exhibit 484, did you apply what's called a
 12 filter?
 13 A. Yes, ma'am.
 14 Q. All right. And is this type of filter something
 15 that's accepted within the scientific community of
 16 forensic video analysis?
 17 A. Yes, ma'am, it is.
 18 Q. Okay. What does this filter do?
 19 A. This filter is a -- excuse me -- it's called
 20 Color-Safe Curves. It is a filter from Ocean Systems,
 21 which is a software provider that produces the plug-ins
 22 or the software that I use on my Avid video system. What
 23 I did with this Curve filter, I basically made the darks
 24 or the darker areas of the images just a little bit
 25 darker, I adjusted those down, and the lighter areas I

118 120
 1 MS. JACK: Okay. With that understanding,
 2 Your Honor, the State would offer State's Exhibit 483 and
 3 484 into evidence for all purposes.
 4 MR. WESTFALL: May I have just a moment to
 5 look at them, Your Honor?
 6 (Pause in proceeding.)
 7 MR. WESTFALL: No objection.
 8 THE COURT: Admitted.
 9 (State's Exhibit Nos. 483 and 484 admitted.)
 10 MS. JACK: May I have this witness step
 11 down, Your Honor, while I publish it?
 12 THE COURT: Yes, you may.
 13 MS. JACK: May I use the easel?
 14 THE COURT: Yes.
 15 Q. (BY MS. JACK) I'm going to ask you to stand over
 16 there at the end of our table.
 17 Mr. Porter, if you would, can you please
 18 tell the Jury what's depicted and what you noted or
 19 notated on each of these stills in State's Exhibit 483.
 20 And begin, if you can, begin at the first one.
 21 A. Okay. In the first image, what I did is I
 22 applied a circle, an orange circle around the vehicle as
 23 it's driving into or up to the drive-through area of the
 24 business.
 25 No. 2 is from Camera No. 7. It shows the

1 top and the front portion of the vehicle as it proceeds
 2 from the drive-through area and through the parking lot
 3 area.

4 Still No. 3 is a continuation of this. It
 5 shows the car basically in its entirety from front to
 6 back.

7 Still No. 4 -- if anyone can't see, please
 8 tell me. Still No. 4 shows the vehicle at the --
 9 basically at the road at the edge of the parking lot,
 10 stopped beside the Budweiser truck.

11 Still No. 5 shows the vehicle as it's turned
 12 out onto the street proceeding up towards the left turn
 13 signal, the stoplight.

14 Still No. 6, the rear of the vehicle, the
 15 rear taillights can be observed just past the post where
 16 the gas pump is. I annotated that with an orange circle
 17 and a line and a annotation that says "rear of vehicle".

18 No. 7 is showing where the car has proceeded
 19 through and made a U-turn, proceeding back the opposite
 20 direction. I annotated -- or excuse me, I annotated the
 21 headlight pattern that you can see reflected on the
 22 ground; the headlights of the vehicle, which are just
 23 visible by the post, and the taillights of the vehicle
 24 that are visible between the edge of the image and the
 25 post where the gas pumps are located.

122 1 Still No. 8 is basically a profile shot. I
 2 annotated it with an orange circle that shows the vehicle
 3 traveling back the opposite direction.

4 Q. In each of these eight stills, does it indicate
 5 the time as is recorded on the video?

6 A. Yes, ma'am. The time stamp can be observed in
 7 the lower left corner of each image.

8 Q. Okay. Can you please tell me the time of the
 9 very first still.

10 A. 06:29 and 6 seconds.

11 Q. And in real time, that would have been what?

12 A. Approximately --

13 Q. A little after --

14 A. -- 5:33, yes, ma'am.

15 Q. Okay. Mr. Porter, if you can do the same with
 16 State's Exhibit 484.

17 A. Okay. In Image No. 1, it's dated -- excuse
 18 me -- time stamp is 06:33 and 16 seconds. I annotated
 19 the two light areas of pixels that I observed at the top
 20 area of the image. One is annotated with a orange arrow;
 21 one is annotated with a green arrow.

22 Q. Go ahead. Talk about each of the stills,
 23 please.

24 A. No. 2, one area of pixels has gone out of the
 25 camera view and proceeded back towards or back behind the

1 Budweiser truck. I annotated one area that's still
 2 visible at the top of the image with an orange arrow at
 3 6:33 and 18 seconds.

4 Still No. 3 is basically a continuation to
 5 show the progression of travel of that light-colored
 6 pixel area from the middle ground, approximately halfway
 7 between the Budweiser -- end of the Budweiser truck and
 8 the side of the business. It shows the light pixel area
 9 traveling approximately halfway in between to closer
 10 towards the edge of the business or the dumpster area.

11 No. 4 is a continuation of No. 3 to show
 12 the direction of travel of that same area.

13 Still No. 5 is 06:45:23 to show there are
 14 no areas -- I don't -- I didn't observe any light areas
 15 of pixels in this area at all at this time.

16 Q. And why is that important?

17 A. To show that no -- I didn't observe any other
 18 pixels going into or traveling out of that area.

19 Q. Okay. And is that what also confirms the fact
 20 that Still No. 1, 2, 3, and 4 are not artifacts but are,
 21 in fact, real things happening in the video?

22 A. Yes. It isn't a pixel. It's an object moving.

23 Q. An object. Thank you. All right. You can go
 24 ahead.

25 A. No. 6, at 06:45 and 24 seconds shows an

124 1 individual coming from the dumpster area where the
 2 light-colored areas were observed traveling into. They
 3 are traveling away or coming out from the dumpster area
 4 towards the Budweiser truck.

5 No. 7 is at 06:45:26. The person is still
 6 traveling towards the end of the Budweiser truck in the
 7 two-toned pickup.

8 Still No. 8, at 06:45:27 shows this
 9 individual turning around and going -- traveling back
 10 towards the dumpster area as a patron exits the front of
 11 the business with an item in his hand; appears to be a
 12 bag of ice.

13 No. 9 is a continuation that shows the
 14 patron a little bit further out of the -- of the front of
 15 the business in the door, and shows this individual still
 16 traveling back towards the dumpster area.

17 Still No. 10, at 06:46:20 depicts an
 18 individual coming back out of the dumpster area behind
 19 the Budweiser employee traveling towards the back of the
 20 Budweiser truck.

21 No. 11 is a continuation of that. It shows
 22 the individual still traveling towards the Budweiser
 23 truck behind the employee as he is walking towards the
 24 front door of the business.

25 Q. Okay. I want to stop you for just a moment. In

1 Still No. 11, the individual that's seen behind what this
 2 Jury now knows to be Arnoldo Dominguez, is that
 3 individual, the attire that he has on, is that consistent
 4 with wearing a white T-shirt?

5 A. Yes, ma'am, it's light-colored upper clothing.

6 Q. Okay. Consistent with wearing blue jeans?

7 A. Yes, ma'am.

8 Q. Consistent with wearing white tennis shoes?.

9 A. Yes, ma'am, white shoes.

10 Q. White shoes. And that may be more visible in
 11 Still No. 7 right here where my finger is; is that
 12 correct?

13 A. Yes, ma'am. You can see his footwear.

14 Q. And State's Exhibit No. 6 as well?

15 A. Yes, ma'am.

16 Q. Okay. Can you tell the members of the Jury then
 17 what's depicted in Still No. 12 on State's Exhibit 484.

18 A. Still No. 12 at 06:47 and 2 seconds depicts two
 19 light areas of pixels moving from the rear area of the
 20 Budweiser truck up towards the top of the image of the
 21 frame away from where the camera is situated.

22 Q. Consistent with running away from the Texaco?

23 A. Yes, ma'am.

24 Q. Is that correct?

25 A. Yes.

1 MR. STRAHAN: Yes, sir.
 2 THE COURT: Defense ready?
 3 MR. HEISKELL: Yes, Your Honor.
 4 THE COURT: Defendant here. Is the Jury
 5 ready?

6 THE BAILIFF: Yes, sir.

7 THE COURT: You may bring in the Jury.

8 (Jury present.)

9 THE COURT: You may be seated.

10 MR. STRAHAN: State would call Corrections
 11 Officer Jose Arriola.

12 THE COURT: Please raise your right hand.
 13 (Witness sworn.)

14 THE COURT: Please have a seat.

15 THE WITNESS: Yes, sir.

16 JOSE ARRIOLA,

17 Having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. STRAHAN:

20 Q. Would you state your name, please, and spell it
 21 for the Court Reporter.

22 A. Jose Arriola, J-O-S-E, A-R-R-I-O-L-A.

23 Q. And how are you employed?

24 A. I work at the Johnson County correctional
 25 facility.

126 1 Q. All right. So with an ending time of 6:47 and a
 2 beginning time of 6:33 -- I'm sorry, 6:29 on the other,
 3 all told, how long did this crime take?

4 A. Approximately 17 minutes.

5 MS. JACK: You can take your seat. Thank
 6 you.

7 I'll pass this witness for
 8 cross-examination.

9 MR. WESTFALL: No questions, Your Honor.

10 THE COURT: May the witness be excused?

11 MS. JACK: Yes, Your Honor. We'd ask that
 12 he be finally released.

13 THE COURT: Thank you. You may be excused.

14 THE WITNESS: Your Honor, can I disconnect
 15 my equipment?

16 THE COURT: Yes.

17 THE WITNESS: It will take me just a couple
 18 of minutes.

19 THE COURT: We're going to take a short,
 20 15-minute recess while you do that.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 (Recess taken from 2:12 to 2:33 p.m.)

24 THE COURT: You may be seated. State ready
 25 to proceed?

128 1 Q. What do you do there?

2 A. I'm the corporal over the -- the back of the
 3 jail, sir.

4 Q. Back of the jail?

5 A. Yes, sir. I'm a supervisor over the back of the
 6 jail.

7 Q. Okay. And as a corporal and a supervisor, how
 8 many other corrections officers do you supervise?

9 A. Mostly 30.

10 Q. About 30?

11 A. Yes, sir.

12 Q. And how long have you worked in that capacity?

13 A. Over two years, sir.

14 Q. Okay. And where did you get your training to be
 15 a corrections officer?

16 A. Through the Johnson County facility.

17 Q. Can you explain to us what you actually have to
 18 do to become a corrections officer?

19 A. Well, basically you're there to make sure
 20 that -- safety of all the inmates, make sure nothing --
 21 no problems are started. It's the very best, you know,
 22 communication.

23 Q. Okay. What I'm getting at is like a police
 24 officer goes through the police academy.

25 A. Correct.

1 Q. Right. And I'm just curious, what specific type
 2 of training do you have once you get hired on by, say,
 3 Johnson County jail?

4 A. I went through a basic training through T.C.C.,
 5 Tarrant County Community, where I got my jailer's
 6 license. It's a school with a three-week program.

7 Q. Okay. And so you go -- you went to T.C.C. and
 8 it was about a three-week program.

9 A. Yes, sir.

10 Q. And they teach you, I guess, what you need to
 11 know?

12 A. Basic training.

13 Q. Basic, okay. And the rest of it, do you learn
 14 on the job?

15 A. Yes, sir.

16 Q. Does Johnson County, the jail, have any rules
 17 about how old you have to be before you can be a jailer?

18 A. No, sir.

19 Q. No. Okay. So if somebody were --

20 A. Oh, 18, you have to be 18.

21 Q. 18, okay.

22 A. Yes, sir.

23 Q. So somebody as young as 18 with a three-week
 24 course at T.C.C. would be qualified and could
 25 potentially be hired on by a jail; is that --

1 A. Correct.

2 Q. Okay. And then you learn, I guess, a lot as you
 3 go?

4 A. Hands-on experience.

5 Q. Okay. And so you've been there a couple years
 6 now?

7 A. Yes, sir.

8 Q. Okay. What specific part of the -- you said the
 9 back of the jail. What does that mean, where you work?

10 A. Mainly all the posts, all the pods, all the
 11 tanks.

12 Q. Okay. And what would be in the front of the
 13 jail then?

14 A. Booking areas, when they come in.

15 Q. All right. So booking areas handle new inmates
 16 as they're coming in, correct?

17 A. Correct.

18 Q. And then what you generally stay is in the back
 19 where everybody is already booked in and being housed in
 20 different places?

21 A. Yes, sir.

22 Q. Okay. Do you do any work in the Ad-Seg area of
 23 your jail?

24 A. Yes, sir.

25 Q. Okay. And in your work in Ad-Seg, have you come

1 into contact with an inmate by the name of Mark Anthony
 2 Soliz?

3 A. Yes, sir.

4 Q. And in your time -- we've talked to other
 5 jailers, so I'm not going to waste a lot of your time,
 6 but in your time there, have you had difficulties with
 7 him as an inmate?

8 A. Yes, sir.

9 Q. Specifically, have you had issues with him
 10 flooding his cell?

11 A. Yes, sir.

12 Q. And would that be on more than one occasion?

13 A. Yes, sir.

14 Q. Okay. Let's talk specifically about an occasion
 15 on July 10th of 2011. Do you recall an issue that arose
 16 where Mr. Soliz was flooding his cell and you had to deal
 17 with that situation?

18 A. Yes, sir.

19 Q. Can you tell us just briefly what was going on
 20 that day and how this kind of started.

21 THE COURT: Can you either scoot forward and
 22 speak into the microphone or speak up a little bit.

23 THE WITNESS: Yes, sir.

24 A. It was a normal day. He was very calm that day,
 25 no problems going on. Then we had a problem with the

130 1 phone. The phone had broke, and he wasn't getting to use
 2 the phone very well. And he had broke the phone earlier
 3 before that.

4 Q. Okay. Let me stop you right there. How does
 5 the phone work? I mean, where is it located?

6 A. We bring it up to their door and we remove the
 7 food slot. We open the food slot. They're allowed to
 8 come down, type in their code which they can communicate
 9 whoever they call.

10 Q. Okay. And so had he been able to use the phone
 11 prior to this?

12 A. Yes, he had his opportunity to use the phone.
 13 It was not working.

14 Q. Okay. And how do you -- does this phone, kind
 15 of like a hotel, make only local calls or how does that
 16 work?

17 A. Yes. You have to be set up to get collect
 18 calls. They have to put money on their books. And if he
 19 runs out of money, then he -- he can't make any phone
 20 calls.

21 Q. Okay. And to this point had he been making
 22 phone calls?

23 A. Yes, sir.

24 Q. Okay. Would that be on few or many occasions?

25 A. Many occasions.

1 Q. Okay. And the other inmates could also make
2 phone calls, but you had to bring the phone to them?

3 A. Yes, sir.

4 Q. And you said, before I cut you off, you said
5 that he had broken the phone earlier in the day?

6 A. Correct. Yeah.

7 Q. How had he done that?

8 A. He had ripped off the part of the volume at the
9 very top. It was like a pay phone. He had ripped off
10 the top where you press to turn up the volume and stuff
11 like that.

12 Q. Okay. And so did you take the phone back up
13 there for him to use again?

14 A. No, sir.

15 Q. Okay. And is that kind of the source of where
16 this problem stemmed?

17 A. Yes, sir.

18 Q. Okay. How did you know that something else
19 besides the phone being broken was going on? How did you
20 become alerted that there was a more serious problem?

21 A. Whenever water started rushing off the top tier
22 over and down to the bottom tier.

23 Q. Okay. And you have had more than one incident
24 with this specific inmate about flooding the cell; is
25 that correct?

1 A. Yes, sir.

2 Q. What kind of problem does it cause for you and
3 also inmates that are housed near there when someone
4 floods their cell?

5 A. Water starts rushing to every cell, you know,
6 you're having to get new bedding, new everything. It
7 stops all inmate movement. It could impede with count if
8 they're around count time, or having to stop, you know,
9 turn off all the water. It's a process. You've got to
10 find the keys, make your way up through several doors to
11 get to the water valve, shut off switches.

12 Q. Okay. And so it also, I guess, would mean
13 certain of the corrections officers are going to have to
14 deal right up front with that problem; is that --

15 A. Yes, sir.

16 Q. -- fair to say?

17 A. Yes, sir.

18 Q. And somebody else is going to have to go and
19 turn the water off. Does it turn the water off to the
20 entire jail or that portion of the jail?

21 A. Just that portion.

22 Q. Okay. But somebody's got to go somewhere and
23 turn that water off?

24 A. Yes, sir.

25 Q. Okay. So would it affect all of the inmates in

1 that area?

2 A. Yes, sir.

3 Q. And it would also affect all the guards in that
4 area that are having to do something?

5 A. Yes, sir.

6 Q. All right. Now, in this particular incident,
7 we're talking about July 10th, 2011. Was there a video
8 made of that incident to show what was going on?

9 A. Yes, sir.

10 Q. And have you watched that video?

11 A. Yes, sir, I have.

12 MR. STRAHAN: Okay. Let me -- may I
13 approach?

14 THE COURT: Yes, sir.

15 Q. This is a short video, by the way. I'm going to
16 show you what's been marked as State's 485. Would you
17 tell me if you've seen that before?

18 A. Yes, sir.

19 Q. Okay. And is this a true and correct copy of
20 the video of the incident that we're talking about from
21 July 10th, 2011?

22 A. Yes, sir.

23 MR. STRAHAN: Okay. At this time, Your
24 Honor, I would offer State's Exhibit 485.

25 MR. HEISKELL: No objection, Your Honor.

1 THE COURT: Admitted.

2 (State's Exhibit No. 485 admitted.)

3 MR. STRAHAN: May I publish this to the
4 Jury?

5 THE COURT: Yes, sir.

6 (State's Exhibit No. 485, DVD with audio,
7 played in open court.)

8 Q. (BY MR. STRAHAN) Now, all that was because he
9 couldn't use a phone that he had broken the same day; is
10 that correct?

11 A. Correct.

12 Q. And whenever you confronted him with it -- well,
13 first of all, you can see the water flowing out of his
14 clogged-up toilet, can you not, in that video?

15 A. Yes, sir.

16 Q. How deep was the water in his cell?

17 A. I would say a couple inches.

18 Q. Okay. And when confronted with that, he's on
19 video, you asked him what, if he's going to stop, are you
20 done? And did he reply he didn't do that?

21 A. Yes, he did.

22 MR. STRAHAN: Okay. I'll pass the witness.

23 CROSS-EXAMINATION

24 BY MR. HEISKELL:

25 Q. Is it Corporal Arriola?

1 A. Yes, sir.

2 Q. Corporal, my name is Mike Heiskell. I have some
3 questions for you.

4 A. Yes, sir.

5 Q. Let's start out on this day of July the 10th.
6 And you said earlier in your testimony that he had
7 allegedly broken this phone earlier that day; is that
8 correct?

9 A. Yes, sir.

10 Q. And what time -- I think we saw on your watch;
11 what time was this with the flooding of the cell?

12 A. The cell was 22:47.

13 Q. And what time is that?

14 A. 10:47.

15 Q. All right. And what time was the allegation that
16 he allegedly broke the phone?

17 A. It was about an hour before that.

18 Q. An hour before that?

19 A. Yes, sir.

20 Q. And he, in fact, told you and I guess the rest
21 of the COs that he did not break that phone; isn't that
22 true?

23 A. Yes, sir.

24 Q. Y'all have hearings in the jail, do you not?

25 A. Yes, sir.

1 the -- that because the phone was already broken when it
2 came to him, and he was found not guilty of that; isn't
3 that true?

4 A. Yes, sir.

5 Q. So based upon your own findings within the
6 Johnson County jail, he's not guilty of that and you know
7 the allegation of him doing that upset him, didn't it?

8 A. Yes, sir.

9 Q. And when he tried to tell you, "Hey, I didn't do
10 it, it was already broken by the time it got to me",
11 isn't that what he told you-all?

12 A. Yes, sir, but he also presented me with one of
13 the pieces of it.

14 Q. And, in fact, the piece he said that came off
15 the phone when he was trying to use the phone; isn't that
16 true?

17 A. Yes, sir.

18 Q. And when y'all had this hearing that was held
19 about a week later on the 17th, all of that was presented
20 to the hearing officer, was it not?

21 A. I was not in that hearing, sir.

22 Q. And by the way, do you ever participate in those
23 hearings, Officer, Corporal?

24 A. Yes, sir. Yes, sir.

25 Q. And so y'all try to be as fair as possible to

1 Q. And these hearings are to afford the inmate some
2 level, if you will, of trying to determine whether an
3 allegation is true or not true, and the finding conducted
4 by a hearing officer; is that true?

5 A. Yes, sir.

6 Q. And when things of this magnitude happen, for
7 instance, the alleged breaking of the phone, the inmate
8 is afforded an opportunity to plead guilty or not guilty;
9 is that right?

10 A. Yes, sir.

11 Q. And if they plead guilty, obviously they'll be
12 found guilty; is that right?

13 A. Yes, sir.

14 Q. Sometimes they plead not guilty, then after the
15 hearing they are found guilty; isn't that true?

16 A. Yes, sir.

17 Q. And in this instance, you know that Mark Soliz
18 pled not guilty to damaging the phone, didn't you?

19 A. Yes, sir.

20 Q. And he was found not guilty of that by your
21 officers, wasn't he?

22 A. Okay. Yes, sir.

23 Q. And so the allegation you said he broke the
24 phone, you and -- well, the hearing officers within the
25 jail had the hearing on that issue, he said he didn't do

1 the inmate, I take it; is that right?

2 A. Yes, sir.

3 Q. And so the people who are selected to be hearing
4 officers, if you will, try to be as fair as -- as
5 possible as they can, as far as you know; isn't that
6 true?

7 A. Yes, sir.

8 Q. And when evidence is presented, testimony is
9 presented, they can fall either way, guilty or not
10 guilty. And in this instance, Mark was found not guilty
11 of destroying that phone; is that right?

12 A. Yes, sir.

13 Q. Now, obviously, when he's accused of that within
14 the jail, phone privileges are pretty important to
15 inmates, are they not?

16 A. Yes, sir.

17 Q. And as well as receiving letters, things of that
18 nature, communication with the outside world, so to
19 speak?

20 A. Yes, sir.

21 Q. If they need to or want to hear from friends,
22 family, what have you, attorneys even, then that phone is
23 the conduit, that's the mechanism of communication to the
24 outside world; isn't that true?

25 A. Yes, sir.

1 Q. And when these inmates don't have access to the
 2 phone, don't get the phone, it can be an upsetting thing
 3 to them; isn't that a fair statement?

4 A. Yes, sir.

5 Q. Can make them frustrated and angry; is that
 6 right?

7 A. Yes, sir.

8 Q. And especially if they've been accused of
 9 something they didn't do from the standpoint of even
 10 having a hearing in which you found they didn't do it;
 11 isn't that true?

12 A. I didn't find that they didn't do it.

13 Q. Well, it was found by the hearing.

14 A. Correct.

15 Q. You indicated that there was at least one other
 16 occasion, I believe you said, and correct me if I'm
 17 mistaken, of which Soliz had flooded his cell; is that
 18 right, Corporal?

19 A. Yes, sir.

20 Q. And I believe you saw one of those yesterday or
 21 whenever it was as far as the O.C. spray, the pepper
 22 spray being used; is that right? Well, you weren't
 23 here. Y'all use pepper spray from time to time?

24 A. Yes, sir.

25 Q. But pepper spray was not utilized in this

1 Q. And so for all you knew at that particular time,
 2 he had broken the phone?

3 A. Correct.

4 Q. Okay. And so later on -- by the way, did
 5 anybody ever fess up to having broken that particular
 6 phone?

7 A. No, sir.

8 Q. Is that one of those unsolved mysteries in the
 9 jail that we'll just never know about?

10 A. Yes, sir.

11 Q. Okay. But the phone was broken nonetheless, and
 12 he handed you a piece?

13 A. Yes, sir.

14 Q. Do you think that gives him the right to flood
 15 that entire area, including all the way down onto the
 16 second floor?

17 A. No, sir.

18 MR. STRAHAN: I'll pass the witness.

19 MR. HEISKELL: Nothing further, Judge.

20 THE COURT: May the witness be excused?

21 MR. STRAHAN: Yes, sir.

22 MR. HEISKELL: Yes.

23 THE COURT: Thank you. You may be excused.
 (Witness excused.)

24 MR. STRAHAN: Call Laurie Gunter.

1 instance, was it?

2 A. No, sir.

3 Q. And it was not necessary to do that because he
 4 was compliant -- became compliant with you and your
 5 officers once this situation was discovered, taped, and
 6 then remedied. You didn't have to use the pepper spray;
 7 is that right?

8 A. No, we did not.

9 MR. HEISKELL: Thank you. That's all.

10 REDIRECT EXAMINATION

11 BY MR. STRAHAN:

12 Q. You actually had to have trustees come and clean
 13 this mess up; is that correct?

14 A. Correct.

15 Q. So it's not like he got a mop and did it
 16 himself?

17 A. Correct.

18 Q. Okay. And that hearing was had, what, seven
 19 days later?

20 A. Yes, sir.

21 Q. And at the time that all this went on, he had
 22 handed you a broken piece of that very phone?

23 A. Correct. And I took pictures of it.

24 Q. And you took pictures of it?

25 A. Myself.

1 THE COURT: Please raise your right hand.

2 (Witness sworn.)

3 THE COURT: Yes, sir.

4 LAURIE GUNTER,

5 Having been first duly sworn, testified as follows:
 6 DIRECT EXAMINATION

7 BY MR. STRAHAN:

8 Q. Would you state your name, please.

9 A. Laurie Gunter.

10 Q. And you're going to have to lean in a little and
 11 speak into that microphone for us, please.

12 A. Laurie Gunter.

13 Q. Thank you. And how do you spell your last name?

14 A. G-U-N-T-E-R.

15 Q. And how are you employed?

16 A. With LaSalle Southwest Corrections at the jail.

17 Q. What do you do there?

18 A. Classifications officer.

19 Q. Okay. And, well, tell us specifically, what
 20 does a classifications officer do?

21 A. Based on criminal history and current history, I
 22 determine where they're housed based on their
 23 classification level.

24 Q. Okay. So you're one of the people that decides
 25 whether somebody goes to like a minimum-security type pod

1 or all the way to Ad-Seg; is that correct?
 2 A. Yes, sir.
 3 Q. Okay. And how long have you been doing that?
 4 A. Four-and-a-half years.
 5 Q. Okay. And what kind of -- have you worked in
 6 jails before this?
 7 A. No.
 8 Q. Okay. And so in your four-and-a-half years,
 9 it's all been with Johnson County, which is run by
 10 LaSalle?
 11 A. Yes, sir.
 12 Q. Okay. What kind of training did you get in
 13 order to be -- to become in this job that you have?
 14 A. I went to jailer's school.
 15 Q. Tell me about jailer's school. Where did you go
 16 to school?
 17 A. In Tarrant County at the training academy.
 18 Q. Okay. And how long was your academy?
 19 A. 90 hours.
 20 Q. 90 hours?
 21 A. I think.
 22 Q. Okay. And is that over several weeks or --
 23 A. Yes.
 24 Q. Okay. And so you get trained, and did you
 25 have your job with Johnson County before you got

1 A. On the job.
 2 Q. Okay. And whenever you work inside the jail, is
 3 there a part of the jail that you as a female officer are
 4 not allowed to go or not?
 5 A. No, sir.
 6 Q. Okay. Do you go to where the men are housed?
 7 A. Yes, sir.
 8 Q. Do you also go where the females are housed?
 9 A. Yes, sir.
 10 Q. Do you go into Ad-Seg?
 11 A. Yes, sir.
 12 Q. Okay. And do males go into the female side of
 13 the jail, male officers?
 14 A. Not typically.
 15 Q. Okay.
 16 A. They're not stationed there.
 17 Q. Okay. But you will find yourself going to all
 18 parts of the jail; is that right?
 19 A. Yes, sir.
 20 Q. Okay. Have you had an occasion to deal with Mark
 21 Anthony Soliz?
 22 A. Yes, sir.
 23 Q. Would that be on few or many occasions?
 24 A. Few.
 25 Q. Okay. Do you recall specifically one time where

146 1 trained or do you go to the school and then try to get
 2 a job somewhere?
 3 A. I was temporarily at the jail on a temporary
 4 jailer's license and then went to school.
 5 Q. Okay. So you were working and going to school
 6 at the same time?
 7 A. Yes.
 8 Q. Okay. And so how much training, before you
 9 stepped into that jail, how much training had you
 10 actually had on the inside of the jail?
 11 A. 40 hours OJT.
 12 Q. What is OJT?
 13 A. On-the-job training with a -- a training
 14 supervisor.
 15 Q. Okay. And so you just follow this training
 16 supervisor, see what that person does for 40 hours?
 17 A. Yes. I shadowed them.
 18 Q. Okay. And so do you do that over several days
 19 or a month or a week?
 20 A. It was for several weeks.
 21 Q. Okay. And so you're basically following someone
 22 and learning on the job and then also going to school?
 23 A. Yes.
 24 Q. Just curious; do you learn more on the job or do
 25 you learn more in the classes?

148 1 you had a problem with him?
 2 A. Yes, sir.
 3 Q. Can you tell us, was this in October of 2011?
 4 A. Yes, sir.
 5 Q. Can you tell us what happened? What was the
 6 situation?
 7 A. He was to be dressed out in a paper gown to go
 8 to a medical exam with the doctor. And while we were
 9 putting the restraints on him for his paper gown, he
 10 pinched my hand up against the bean chute door.
 11 Q. Okay. Now, tell us how do you actually put --
 12 if you're going to take somebody from Ad-Seg out of their
 13 cell, how do you go about putting their hand restraints
 14 on them or wrist restraints?
 15 A. Their hands are placed in front of him through
 16 the bean chute door, which is a square hole in the door,
 17 and I physically put the handcuffs on him while his hands
 18 are outside the door.
 19 Q. Okay.
 20 A. And tighten them down and lock them.
 21 Q. Okay. And do you get specific -- it seems like
 22 maybe, you know, to the outside world not a big deal to
 23 put some handcuffs on someone, but do you get specific
 24 training and experience doing that?
 25 A. Yes, sir.

1 Q. And there's a certain way that you have to do
2 that, correct?

3 A. Yes, sir.

4 Q. Is it a problem, No. 1, if the handcuffs are not
5 double locked?

6 A. Yes, sir.

7 Q. Is it a problem if they're too loose or too
8 tight?

9 A. Yes, sir.

10 Q. And is it also a problem if you've got one hand
11 cuffed and you lose control of the other hand?

12 A. Yes, sir.

13 Q. Or either hand at that point?

14 A. Yes, sir.

15 Q. Okay. And so you have to be careful?

16 A. Yes, sir.

17 Q. Okay. And so a person who you're going to take
18 out of Ad-Seg would put their hands behind them and
19 through the bean chute; is that correct?

20 A. Yes, sir.

21 Q. And are you trained to only lock their hands
22 behind their back coming out of that cell or those cells?

23 A. Yes, sir.

24 Q. Okay. On this particular occasion, you were
25 just taking Mr. Soliz to some medical-type appointment;

150 1 is that correct?

2 A. Yes, sir.

3 Q. Okay. And did you have an issue while cuffing
4 him; you said that he pinched you?

5 A. Well, I was tightening the handcuffs down for a
6 double lock. He pulled his hands back through, which
7 pulled my hand up against the door and pinched it up
8 against the door.

9 Q. Okay. And was it kind of trapped against the
10 door?

11 A. Yes, sir.

12 Q. Okay. And forgive this, but how -- how big are
13 you?

14 A. 5 feet.

15 Q. 5 feet. Okay. And so would he be a lot
16 physically stronger than you?

17 A. Yes, sir.

18 Q. And so your hand is trapped against the door.
19 Is it causing you any pain?

20 A. Yes, sir.

21 Q. Okay. And so you're stuck?

22 A. Yes, sir.

23 Q. Did you say anything to Mr. Soliz about that?

24 A. Yes, sir. I told him he had my hand and he
25 needed to let go.

1 Q. Okay. Did he immediately let go?

2 A. No, sir.

3 Q. Okay. How long do you think that he held you
4 there like that?

5 A. For several seconds. And I asked him again, and
6 he still would not let go.

7 Q. Okay. And did you have someone there that could
8 help you if this situation didn't --

9 A. Corporal Kinnard was not right up against me but
10 he was close.

11 Q. Okay. And so did you continue to talk to
12 Mr. Soliz while your hand was being pinned against the
13 bean chute?

14 A. Yes.

15 Q. Okay. And did he say anything to you?

16 A. He said that I -- that the cuffs were tight,
17 were tight enough and I wasn't going to tighten them down
18 any more.

19 Q. Okay. And what did you say to him?

20 A. And I said we were going to follow procedure and
21 he was going to let go of my hand.

22 Q. Okay. And so did it appear to you that this was
23 intentional then?

24 A. Yes, sir.

25 Q. Okay. And he knew he was hurting you after you

1 said that?

2 A. Yes, sir.

3 Q. And he continued to do that?

4 A. Yes, sir.

5 Q. Okay. And about how long did the whole
6 incident, you think, take before it was resolved?

7 A. Maybe a minute, minute and a half.

8 Q. Okay. And how was it finally resolved?

9 A. He finally loosened his hold and we

10 double-locked the handcuffs, and then we finished putting
11 the shackles on and took him to his visit.

12 MR. STRAHAN: I'll pass the witness.

CROSS-EXAMINATION

14 BY MR. HEISKELL:

15 Q. Ms. Gunter?

16 A. Sir.

17 Q. My name is Mike Heiskell. I have some
18 questions. You are very soft spoken, so we're going to
19 ask if you could speak up a little louder, please. And
20 if I ask you something you don't understand, I'll try to
21 start over.

22 You said that you were dressing him out --
23 or, I'm sorry, he was being dressed out for medical
24 reasons; is that correct?

25 A. Yes, sir.

1 Q. And this Ad-Seg area is an area where a lot --
 2 well, the jail itself, when you get around inmates, it's
 3 a lot of noise; isn't that true? People hollering and
 4 screaming and so forth; isn't that right?

5 A. Sometimes.

6 Q. And you went to have his -- put his hands
 7 through the bean chute. And as the Prosecutor
 8 demonstrated from his seat, I believe what we talked
 9 about doing is that you call the inmate to back up to the
 10 bean chute and put his hands back --

11 A. Yes, sir.

12 Q. -- is that right? I'm sorry?

13 A. Yes, sir.

14 Q. And when he does that, he -- Mark Soliz complied
 15 and backed his hands up; isn't that true?

16 A. Yes, sir.

17 Q. And was that the first time you had done that
 18 that day or you had done it earlier to him?

19 A. That was the first time I had done it that day.

20 Q. I'm sorry?

21 A. That was the first time I had done that today --
 22 or that day.

23 Q. And in doing so, he did comply initially by
 24 backing up and putting his hands through the -- through
 25 the bean chute?

1 A. Yes, sir.

2 Q. And you proceeded to clamp down on the -- on the
 3 handcuffs, is that right, to put the handcuffs on him?

4 A. Yes, sir.

5 Q. And at that point, you're saying you were
 6 following procedures to double-lock the handcuffs?

7 A. Yes, sir.

8 Q. And as the Prosecutor said, sometimes it can be
 9 too loose and sometimes it can be too tight; isn't that
 10 true?

11 A. Yes, sir.

12 Q. And if the handcuff is tight on an inmate, then
 13 certainly that can cause pain to that inmate, can't it?

14 A. Yes, sir.

15 Q. And you've seen that before, have you not?

16 A. No, sir.

17 Q. You've never seen that before?

18 A. I've never put handcuffs on too tight, sir.

19 Q. Okay. Well, in this instance, when you put them
 20 on, he kind of flinched to a point where, as you said, he
 21 pulled back and which pulled your hand toward the door or
 22 the bean chute; is that right?

23 A. Yes, sir.

24 Q. Okay. And I believe you said at that point you
 25 asked him to pull back or something, words to --

1 A. To release his hold.

2 Q. To release. To release.

3 A. Uh-huh.

4 Q. And, now, this is a metal door?

5 A. Yes, sir.

6 Q. Is that right? The only slot that's open is
 7 down at the bean chute; is that right?

8 A. Yes, sir.

9 Q. The glass at the top that you can look into the
 10 cell to actually see; is that right?

11 A. Yes, sir.

12 Q. And with a person with a soft-spoken voice where
 13 there may be some noise, screaming going on, you may have
 14 to say things more than once to an inmate in order for
 15 that inmate to hear you clearly about what you're
 16 requesting; isn't that true?

17 A. It's possible.

18 Q. All right. And at some point when -- after he
 19 had pulled back and flinched from the tightening of the
 20 cuffs, when you asked him, eventually he kind of released
 21 or whatever, pulling back so you can finish your job;
 22 isn't that true?

23 A. After repeated, yes.

24 Q. I'm sorry? I couldn't hear you.

25 A. After repeated asked, yes.

1 Q. Okay. And, now, were any type of administrative
 2 action taken against Mark Soliz for this? Was he written
 3 up, a disciplinary action hearing and so forth?

4 A. I did write a report, sir. I don't recall
 5 anything about disciplinary.

6 Q. In fact, you know from your own records that
 7 none was filed. You know that, right?

8 A. I don't know, sir. I don't recall.

9 Q. Were any photographs taken of the pinched area
 10 of your hand or wrist or --

11 A. No, sir.

12 Q. -- anything like that? Ma'am?

13 A. No, sir.

14 Q. And but after this happened, Mark Soliz complied
 15 with your request. You were able to get him out and take
 16 him to his medical to continue -- so you could continue
 17 on with your duties; is that right, ma'am?

18 A. Yes, sir.

19 Q. No other problems with him?

20 A. No, sir.

21 MR. HEISKELL: Okay. That's all.

22 REDIRECT EXAMINATION

23 BY MR. STRAHAN:

24 Q. If he answered you and said the cuffs were not
 25 going to get any tighter, is that a pretty good idea that

1 he heard you?

2 A. He heard me clearly.

3 Q. Absolutely. He hurt you anyway, didn't he?

4 A. Yes, he did.

5 Q. And he continued to hurt you, even when you
6 asked him to stop?

7 A. Yes, he did.

8 MR. STRAHAN: I'll pass the witness.

9 RECROSS-EXAMINATION

10 BY MR. HEISKELL:

11 Q. Did you -- you said, well, you said he continued
12 to hurt you. You went to medical? Did you go to
13 medical?

14 A. No, sir.

15 MR. HEISKELL: That's all, Judge.

16 MR. STRAHAN: No further questions, Judge.

17 THE COURT: May the witness be excused?

18 MR. STRAHAN: Yes, sir.

19 THE COURT: Thank you. You may be excused.

20 (Witness excused.)

21 MR. STRAHAN: State would call Ronnie

22 McCowan.

23 THE COURT: Raise your right hand.

24 (Witness sworn.)

25 THE COURT: Thank you. Have a seat.

1 A. No, sir.

2 Q. Okay. And you've been here, you said, two
3 years?

4 A. Two plus years, yes, sir.

5 Q. Two plus years. Okay.

6 A. Not quite three.

7 Q. Okay. And what are your job duties on a
8 day-to-day basis out at the jail?

9 A. Well, as a corporal, I -- my responsibility is
10 the back of the jail. I make sure everyone is doing
11 their paperwork. And I go in, and including segregation,
12 I sign the folders, making sure that everyone is getting
13 their yard out, getting rec -- getting fed, you know,
14 just making sure everything is done properly for the
15 Segregation inmates.

16 Q. Okay. And so you spend a lot of your time with
17 the Segregation inmates; is that correct?

18 A. Yes, sir.

19 Q. Okay. And in your time in the Segregation Unit,
20 have you come into contact with Mark Anthony Soliz?

21 A. Yes.

22 Q. And would that be on few or many occasions?

23 A. Many occasions.

24 Q. Okay. And have you had any issues with him,
25 number one, causing damage or flooding his cell?

1 RONNIE MCCOWAN,

2 Having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. STRAHAN:

5 Q. Would you state your name, please.

6 A. Ronnie McCowan.

7 Q. And how are you employed?

8 A. I am a Corporal at the Johnson County jail. I
9 work for LaSalle Southwest Corrections.

10 Q. And how long have you done that?

11 A. At this facility?

12 Q. Yes, sir.

13 A. Approximately two years, two-and-a-half.

14 Q. Okay. And did you work somewhere prior to that?

15 A. Texas Department of Criminal Justice.

16 Q. And where did you work?

17 A. I worked Ellis One. I've worked Diagnostic
18 Unit, which is now the Byrd Unit. I opened up the
19 Hutchins State Jail in Hutchins, Texas; that's near
20 Dallas. I've worked at various units.

21 Q. Okay. So you've worked in the prison and in the
22 State Jails which are all by T.D.C.J.; is that correct?

23 A. Yes, sir.

24 Q. And then also have you worked in other jails
25 besides Johnson County?

1 A. Yes, sir.

2 Q. Okay. And has he had issues on few or many
3 occasions that you're aware of?

4 A. Few occasions that I'm aware of. I witnessed
5 one such occasion.

6 Q. Okay. And was that on April 24th, 2011?

7 A. Yes, sir.

8 Q. Okay. Can you tell the Jury what was going on
9 prior to the problem that you had?

10 A. Well, I -- this was when I was still a
11 corrections officer. I was -- I wasn't a corporal then
12 at this incident. I was just working Blue West, which is
13 our segregation area in the jail. It's a single cell, one
14 inmate per cell. They have a shower, toilet, sink in
15 there, so it's pretty -- everything is self-contained.
16 There's a food slot which we pass them the food, the
17 trays, and we give drinks and everything.

18 And on this particular instance, I was
19 passing out juice before a meal was being served, and I
20 had given Mark Soliz his juice and he asked me for more
21 than what I could give everyone. So I have to give
22 everyone the same. And he became upset because I
23 wouldn't give him more than what I was able to give to
24 another inmate.

25 Q. How could you tell that he became upset?

1 A. Well, he flooded his cell. He became very
 2 upset. He took his clothes and put them underneath the
 3 door and stopped up the drain in the cell. Which when he
 4 stopped up the toilet, it caused it to overflow, and
 5 there was a quite amount of water in his cell. And when
 6 he pulled the pants and the shirt away from underneath
 7 the door, he forced all the water underneath the door
 8 which created a flood that went outside the day room door
 9 and down the hall. It was -- it was quite an extensive
 10 cleanup.

11 Q. Okay. And so that kind of causes a problem for
 12 other inmates as well as the other corrections officers?

13 A. Yes, sir.

14 Q. Okay. And on this particular day, whenever you
 15 discovered he was doing this, did you go in there and try
 16 to take him out of his cell and clean up his cell?

17 A. Yes, sir, we -- we tried, yes, sir.

18 Q. And what happened when you tried?

19 A. Well, we had -- we had to -- we were -- he sat
 20 on his bunk and he grabbed the -- with one hand he
 21 grabbed the front of the bunk, which is all metal, flat
 22 metal. It's probably maybe an eighth of an inch thick.
 23 So, I mean, it's a pretty heavy bunk. But he grabbed
 24 hold of the front part and the back part of the bunk and
 25 just braced himself in there and would not be allowed to

1 be handcuffed.

2 I managed to get one of his hands free and
 3 get it handcuffed and put it behind his back, but the
 4 other officers couldn't get the other hand free in order
 5 for us to handcuff him from behind.

6 Q. Okay. And were you attempting to handcuff him
 7 behind his back?

8 A. Behind his back. And just all we were going to
 9 do is just take him to another cell.

10 Q. So you were just going to take him to a cell,
 11 out of his cell that he had already flooded on his own?

12 A. Yes, sir, because the toilet was stopped up;
 13 therefore, until we got it unstopped, he couldn't or
 14 another inmate couldn't be in that cell.

15 Q. So did he agree to allow you to handcuff him
 16 behind so that you could get him out of the cell he
 17 flooded?

18 A. No, sir, he -- he refused.

19 Q. Okay. And you said you got one handcuff on one
 20 of his arms; is that correct?

21 A. Yes, yes, sir.

22 Q. How many officers were in there trying to
 23 handcuff this one inmate?

24 A. I believe there was myself; Officer Jesse
 25 Turner, and Lieutenant Noel Boutwell. So there was --

1 and Mr. Turner, Officer Turner, he's a very large man,
 2 very tall man; so was Lieutenant Boutwell. He's taller
 3 than I am.

4 Q. Okay. So there were three of you working to get
 5 Mr. Soliz, just his arms behind his back so that you
 6 could cuff him to take him out of his cell that he had
 7 flooded?

8 A. Yes, sir.

9 Q. Okay. Did you ever get his hands cuffed behind
 10 his back?

11 A. No, sir.

12 Q. Okay. Were they just cuffed ultimately in
 13 front?

14 A. Yes, sir.

15 Q. Okay. And whenever you have to do this sort of
 16 a incident with inmates, are -- somebody hold a hand-held
 17 video so that you can do that?

18 A. Yes, sir.

19 MR. STRAHAN: Okay. Approach, Your Honor?

20 Q. Do you recall if there was a video made of this
 21 incident? Okay. Is that a yes?

22 A. Yes, sir.

23 Q. And that was from 4/24/2011, correct?

24 A. Yes, sir.

25 Q. And does the video fairly and accurately depict

1 exactly what happened?

2 A. Yes, sir.

3 MR. STRAHAN: Okay. At this time, I'll
 4 offer 486.

5 MR. HEISKELL: No objection, Your Honor.

6 THE COURT: Admitted.

7 (State's Exhibit No. 486 admitted.)

8 Q. (BY MR. STRAHAN) Now, let me ask you something.
 9 Do they -- is there some law that makes you give inmates
 10 in Ad-Seg a mattress?

11 A. Yes, sir.

12 Q. Do you have to give them a pillow and a blanket?

13 A. Yes, sir.

14 Q. So they -- go ahead, I'm sorry.

15 A. Well, not pillows, but they do -- they are given
 16 blankets and bedding.

17 Q. Okay. So what happens if an inmate destroys his
 18 own mattress? Do you have to give him another one?

19 A. Eventually, yes, sir, within a proper amount of
 20 time.

21 Q. Okay. And just what kind of amount of time
 22 would that be?

23 A. A few minutes or a few hours, depending on
 24 what's going on in the jail. The mattresses are kept in
 25 a different location in the jail; just however long a

1 time it would take.

2 Q. So as soon as reasonably practical, you have to
3 get an inmate another mattress after he just destroyed
4 his own?

5 A. Yes, sir.

6 Q. And what if he destroyed two? Would you have to
7 give him two? Do they have to have a mattress?

8 A. I would say yes, sir, he would have to have one,
9 but I never had anybody ever destroy two in a row or --

10 Q. On the same day?

11 A. On the same day.

12 Q. Okay.

13 (State's Exhibit No. 486, DVD with audio,
14 played in open court.)

15 Q. Now, is it against your policy in Ad-Seg to
16 leave an Ad-Seg inmate out with their hands in front of
17 them?

18 A. Yes, sir. Under those circumstances, he should
19 have been handcuffed behind his back.

20 Q. Okay. Were y'all standing in a puddle when you
21 were dealing with him?

22 A. Yes, sir, approximately 2 inches of water.

23 Q. And I'm guessing that Jesse Turner was the one
24 that ended up kind of on the left. You described him as
25 a big, big man?

166 1 A. He -- yes, sir.

2 Q. Okay. And so there were three of you trying to
3 get the cuffs on Mr. Soliz who was barefoot and in his
4 boxers; is that correct?

5 A. Yes, sir.

6 Q. And, in fact, you never got his hands cuffed
7 behind his back?

8 A. No, sir.

9 Q. Okay. And in -- he said he wasn't going to have
10 his hands cuffed behind his back; is that right?

11 A. Yes, sir.

12 Q. And is it, generally speaking, a good rule to
13 let the inmate dictate how these things are going to go?

14 A. No, sir.

15 Q. Okay. Can you explain? Just, I mean, you were
16 not the person in charge, correct --

17 A. No, sir.

18 Q. -- in this situation? Can you explain why he
19 was allowed to come out with his hands cuffed in front of
20 him just like he had wanted?

21 A. Well, it was Lieutenant Noel Boutwell's decision
22 to allow Mr. Soliz to come out of his cell with the
23 handcuffs in the front, just to get him -- it was more of
24 a -- just to get him moved, just -- and that's pretty
25 much his rationale.

1 Q. Okay. And you're a corporal now; is that
2 correct?

3 A. Yes, sir.

4 Q. Do you just -- and I'm not trying to say
5 anything about Mr. Boutwell, but do you, the way you're
6 trained and the way you operate now, do you think that
7 that was a good idea?

8 A. That would -- that would not happen, not with --
9 not with me.

10 Q. Okay. Does it become a problem if the inmate
11 starts to dictate how the guards operate?

12 A. Yes, sir.

13 Q. Okay.

14 A. We're not in the business of negotiation.

15 Q. Okay. And all this was because he didn't get an
16 extra juice?

17 A. Yes, sir. He get -- to get more than what
18 he's -- what other inmates are given, the same amount.

19 MR. STRAHAN: Okay. I'll pass the witness.
20 CROSS-EXAMINATION

21 BY MR. HEISKELL:

22 Q. Corporal McCowan, my name is Mike Heiskell. If
23 I ask you something, don't hesitate to stop me and make
24 it clear. Okay. And also you need to speak up audibly
25 so the Court Reporter can take it down.

168 1 You worked at T.D.C.J. for a number of
2 years; is that correct, sir?

3 A. Yes, sir.

4 Q. And you've seen situations where -- flooded
5 cells before?

6 A. Yes, sir.

7 Q. That's a common occurrence, isn't it?

8 A. Um, I would say it occurs frequently in
9 predominantly the Segregation areas of most prison units.

10 Q. And when that happens, I guess you go through
11 some of the same protocol, try to go in to get the inmate
12 out so that cell can be cleaned by either other inmates
13 who are trustees or perhaps some other staff; is that
14 correct?

15 A. Yes, sir.

16 Q. And y'all have trustees here at the Johnson
17 County jail as well?

18 A. Yes, sir, we do.

19 Q. Okay. And the fact -- from the standpoint of
20 the mattress, I believe the Prosecutor made some
21 statement about a mattress being flooded or being somehow
22 destroyed or damage done, I guess is a better word, in a
23 flooded cell; do you remember that?

24 A. Yes, sir, I remember.

25 Q. And are those mattresses on the floor or are

1 they raised mattresses?

2 A. Well, there's -- what you were seeing where
3 Mr. Soliz was sitting down, he was holding the -- he was
4 sitting on his mattress but he was holding the metal
5 mattress where the -- I mean, where the bunk is to brace
6 himself so, um...

7 Q. I'm just asking where the mattress was.

8 A. Well, the blue, the blue part you saw in the
9 video --

10 Q. Yes.

11 A. -- that's the mattress cover. Inside the
12 mattress cover is the mattress.

13 Q. Is the mattress. And how far off the ground,
14 the floor, is the mattress?

15 A. I would say approximately 12 to 18 inches, give
16 or take.

17 Q. So there was not a damaged mattress in this case
18 because you said it was a couple inches; is that right?

19 A. 12 to 18 inches off the floor.

20 Q. And those are the same heights of mattresses, I
21 guess, in all Ad-Seg cells, is that correct, the same
22 height from the floor?

23 A. Approximately, yes, sir.

24 Q. Now, Corporal, all this is over him not getting
25 the juice, some extra juice?

170 1 A. Extra juice, yes, sir.

2 Q. Do you have kids?

3 A. No, sir.

4 Q. Are you familiar with child-like behavior, kids
5 who may throw temper tantrums?

6 A. Yes, sir.

7 Q. When they don't get something that mama or daddy
8 didn't give them or whatever, they hold their breath,
9 they do something, they stomp and they throw a tantrum;
10 is that right?

11 A. Yes, sir.

12 Q. And that, you know, from young kids who have a
13 feeble mind and they throw these types of tantrums, it's
14 to not only get attention but also to try to demand in
15 their own particular manner what they want; is that
16 right?

17 A. Yes, sir.

18 Q. And you -- I guess you've seen it or know of
19 that to happen with children before?

20 A. So I've heard, yes, yes, sir.

21 Q. As a matter of fact, we've heard in the video,
22 "All I want is I want some juice. All I want is some
23 juice." Remember toward the end of that video?

24 A. Yes, sir.

25 Q. And then there was, again, making reference to

1 the juice he didn't get from whenever you were pouring it
2 a little while earlier; is that right?

3 A. He had been given juice before he flooded his
4 cell. Everyone, everyone in Blue West received juice.

5 Q. And at the end of that, I believe I also heard a
6 statement to the effect of, before he was lifted up and
7 left, is that, "Hey, that's all you have to say to me,"
8 and then he complied. Do you remember that, sir?

9 A. Yes, sir.

10 Q. And that was something that he said in response
11 to either you or Lieutenant Boutwell or CO Turner saying
12 something to him; is that correct?

13 A. Yes, sir.

14 Q. And once those words were stated, then he said,
15 "Well, that's all you have to say," and he got up and
16 walked out with you-all; is that right?

17 A. Yes, sir.

18 Q. Like a kid would do maybe once he hears
19 something; is that right?

20 A. You could say that.

21 MR. HEISKELL: Pass the witness.

22 REDIRECT EXAMINATION

23 BY MR. STRAHAN:

24 Q. It's also like a convict, a seasoned convict
25 would do too, isn't it?

172 1 A. Yes, sir.

2 Q. Do whatever they have to do to manipulate guards
3 and get their way?

4 A. Yes, sir.

5 Q. Okay. Are you aware that this Defendant has
6 been convicted of capital murder now?

7 A. Yes, sir, I have.

8 Q. Okay. Do you think that security is a concern
9 for this particular inmate?

10 A. Yes, sir, I do.

11 Q. Okay. Do you recall an incident that occurred
12 on February 28th, 2012 back in the jail regarding the
13 blue box?

14 A. Yes, sir, I do.

15 Q. Can you describe to us what the blue box and the
16 handcuff things are.

17 A. Okay. Everyone knows what a pair of handcuffs
18 looks like, but in our line of work, there is a special
19 box that secures the handcuffs where they can't be turned
20 or twisted, and it creates -- it makes it where it's very
21 difficult for the person who is wearing them to be able
22 to -- I'm sorry -- manipulate the locking mechanism
23 within the handcuffs.

24 And Mr. Soliz came in back from court on
25 February 28th. We were -- we were in the C-1 infirmary

1 area, which is the back door to the jail, and we were in .
 2 this enclosed caged environment by the back door. And
 3 this is where we -- our staff members, the LaSalle
 4 corrections officers, we pass on Mr. Soliz to the
 5 deputies. And the deputies bring Mr. Soliz back. And
 6 then we carry him, once he's inside the jail, back to
 7 Blue West where we keep our segregation inmates.

8 When he came back on this day, he -- I
 9 noticed -- I looked down and I noticed that the blue box,
 10 there is a metal bracket that fits over it to make it
 11 secure, and then there is a brass ring that fits through
 12 the hole. There's two holes; one in the bracket and one
 13 in the box. So when you put them together, you can put
 14 the brass ring through and you can feed the chains
 15 through it in order to secure his waist to his handcuffs
 16 and blue box with his leg irons. So everything is
 17 attached.

18 MR. STRAHAN: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 Q. I'm going to show you what's been marked as
 21 State's No. 487 and State's No. 488. Can you tell me
 22 what those are?

23 A. These are two pictures; one is a blue box and a
 24 pair of handcuffs, and the second one is -- it looks like
 25 it's -- it's the same thing.

174 1 Q. With the chain?

2 A. With the chain, um, with a piece missing, if I'm
 3 looking at this correctly. Yes.

4 Q. Okay. Do these fairly and accurately represent
 5 the blue box and the belly chain that would go around the
 6 waist of this Defendant upon his return to the jail?

7 A. Yes, sir.

8 MR. STRAHAN: Okay. I'll offer 487, 488.

9 MR. HEISKELL: No objection to 487 and 488,
 10 Your Honor.

11 THE COURT: Admitted.

12 (State's Exhibit Nos. 487 and 488 admitted.)

13 Q. (BY MR. STRAHAN) Okay. I'm putting State's
 14 Exhibit 487 up on the screen. Now, can you tell us
 15 again -- or you were explaining what parts go into what.
 16 Is this the blue box?

17 A. Yes, sir.

18 Q. Okay. Tell us about that. How does that work
 19 then?

20 A. Okay. Inside this box, there is a pair of
 21 regular handcuffs that -- that probably everyone has seen
 22 someone being arrested on TV or wherever, but that's just
 23 a plain pair of handcuffs. The blue box fits over the
 24 handcuffs which covers the key hole and the -- most of
 25 the locking mechanisms where it cannot be manipulated

1 when properly applied. And this is the metal bracket
 2 that would go over, that you can see how it's been made
 3 to fit this metal bracket in order to secure it.

4 Q. Okay. So this whole box, the idea is to
 5 basically secure the chain in between the two sets of
 6 cuffs; is that correct?

7 A. Yes, sir, and --

8 Q. And the end of the cuffs as well?

9 A. Yes, sir, and to prevent tampering with the
 10 locking mechanisms.

11 Q. And on the 28th day of February, which I'll
 12 represent to you is the second day of evidence in this
 13 trial, 2012, did you have a problem with Mr. Soliz and
 14 that box?

15 A. Yes, sir, I did.

16 Q. Can you explain to us what you saw, what
 17 happened?

18 A. Well, he came back, and I saw that the -- that
 19 the metal bracket wasn't properly inserted over the blue
 20 box and -- but the brass ring was fitted through the blue
 21 box. And the way that it was applied, I notified
 22 Lieutenant David Boggess of this.

23 And he reached over to look at Mr. Soliz's
 24 setup, which is what we call it, the blue box and the
 25 handcuffs and the belly chain and the leg irons, and

176 1 he pulled the bracket out, and Mr. Soliz was able to
 2 free himself from the -- from the blue box and was able
 3 to -- he was still connected, but he was free where he
 4 could possibly have injured someone if he wanted to be
 5 violent.

6 Q. Let me ask you something. This slot here, we've
 7 talked about it, but I don't think I was real clear.
 8 This fits into this slot; is that correct?

9 A. Yes, sir.

10 Q. And it goes all the way up and there's a
 11 matching slot there?

12 A. Yes, sir.

13 Q. That something goes in between to lock this into
 14 that?

15 A. Yes, sir.

16 Q. Okay. And so you're saying that the key thing
 17 was filled in there, but this thing wasn't all the way
 18 pushed in?

19 A. No, sir.

20 Q. So this thing could come out at any time and the
 21 whole box could come off?

22 A. Yes, sir.

23 Q. Okay. Okay. And so was any action taken at
 24 that time to figure out what had happened there?

25 A. I'm sorry. I couldn't hear you.

1 Q. Was any action taken at that time to figure out
2 why his box was not locked correctly?

3 A. Well, at that time, I was ordered by the Warden
4 Janicek to re-administer the handcuffs, leg irons, check
5 everything and redo it according to the way Warden
6 Janicek wanted it done. And then Lieutenant Boggess and
7 I, we escorted Mr. Soliz back to Blue West housing area.

8 Q. Okay. Did anyone inquire of Mr. Soliz what he
9 knew about this particular lock box problem?

10 A. Yes, sir.

11 Q. Tell us about that.

12 A. Well, Lieutenant Boggess and I were escorting
13 him; we each had an arm, we both had our -- an open hand
14 escorting Mr. Soliz down the hallway. And Lieutenant
15 Boggess said that -- asked him about, you know, "You know
16 what you did", you know, asking, you know, trying to get
17 him to admit to it. And Mr. Soliz says, "Yeah, I know,
18 you know, I did it."

19 Q. Okay. And so that would tell you that that was
20 an intentional tampering of this device in order to free
21 himself of the lock box?

22 A. Yes, sir.

23 Q. While in this trial?

24 A. Yes, sir.

25 Q. Okay. Do you think that's a child-like act or

1 A. I don't know.

2 Q. You've never seen it before?

3 A. Yes, sir, I have, in T.D.C. That was -- I
4 started in 1991. We've had blue boxes for many years.

5 Q. Okay. I'm talking about seeing it before -- I'm
6 sorry, I didn't ask that correctly -- in Johnson County.

7 A. In Johnson County?

8 Q. Yes, sir.

9 A. Um, I'm sure they -- they had them, but I've
10 only seen them in the jail probably in the last two
11 years.

12 Q. And so it's up to the jailer to make sure that
13 that thing goes in all the way in the blue box so it
14 won't come out by, you know, slipping out or whatever;
15 isn't that true?

16 A. Well, it's kind of hard to say that it's going
17 to slip out because that bracket, there's pressure on
18 that metal bracket that you have to use a certain amount
19 of force to put it in there.

20 Q. Right.

21 A. That you know that it's there.

22 Q. Well, and if the force, you hear the force and
23 it will click, there will be a clicking sound, right?

24 A. No, sir, there won't. It's a visual thing. You
25 know it's in there.

178 1 do you think that's a sophisticated act of a convict?

2 A. I think it's a very sophisticated act of a
3 convict who intended just to show that he could -- what
4 he's capable of.

5 MR. STRAHAN: Thank you. I'll pass the
6 witness.

RECORD-EXAMINATION

7 BY MR. HEISKELL:

8 Q. Corporal McCowan.

9 A. Yes, sir.

10 Q. You're saying that with a -- this man with a
11 belly chain on and blue box with -- inserted properly,
12 that he was able to get out of that like Houdini; is that
13 right?

14 A. I'm not saying that, sir, because I wasn't with
15 Mr. Soliz the whole day. I wasn't there when he was --
16 when the -- he's not in handcuffs or leg irons right now,
17 so someone has to administer those and take him back to
18 the jail.

19 Q. Well, who put the blue box on him that day?

20 A. I do not know, sir. I was not here. I was at
21 the jail.

22 Q. And the blue box is a new contraption?

23 A. No, sir, it's been around for a few years.

24 Q. Was it -- is it new to Johnson County?

179 1 Q. When you know it's in there, it presses up
2 against another piece of metal inside; isn't that true?

3 A. The blue box is actually made of a plastic, a
4 polymer plastic that's very -- it's very, very tough.
5 But the metal bracket is actually a metal bracket. I
6 don't know what kind of metal but it's -- it's --

7 Q. Okay.

8 A. -- it's been tested.

9 Q. It's been tested and there is at least some type
10 of acknowledgment that it's in there, a clicking sound or
11 something to indicate that it's locked in?

12 A. Yes, sir.

13 Q. Is that true?

14 A. Well, the way it's designed is that metal
15 bracket will fit plumb against the blue box on all
16 three sides.

17 Q. And how would a CO know that it's locked in?

18 A. You just visually look at it. You can tell that
19 it's in there, inserted properly.

20 Q. Well, are there any type of probes or anything
21 that come up or anything to indicate that it's locked in
22 other than just looking?

23 A. Well, when you visually see it's locked in,
24 that's when you insert the brass ring and then administer
25 putting the other -- the belly chain on and adding to --

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1 Q. Right.

2 A. -- the setup.

3 Q. And if that CO does not visually look at it or
4 maybe if he visually looks at it, didn't look at it
5 appropriately or properly, then it may not be locked in;
6 isn't that true?

7 A. But that's -- it's like -- it's hard to say that
8 because it's kind of like if you're handcuffing someone,
9 it's kind of like how do you not see that you're not
10 doing it right? It's -- I can't explain how he came back
11 to the jail the way he was.

12 Q. Well, you've seen instances where people are
13 handcuffed with regular cuffs --

14 A. Uh-huh.

15 Q. -- and the cuffs are too loose and the person
16 can slip their hand out; isn't that true?

17 A. Yes, sir.

18 Q. So that's a mistake on the part of the CO to do
19 that; isn't that true?

20 A. Well, not necessarily. The person could be
21 double-jointed, and we have no way of knowing that. Or
22 the person may have small wrists.

23 Q. Well, that's part of what the CO is to do, to
24 check their wrists to make sure they fit appropriately?

25 A. But if someone is double-jointed, we're not

1 going to check to see if they're double-jointed.

2 Q. So double joint -- is Mark Soliz double-jointed?
3 A. I don't know. I have no idea, sir. He was
4 still in his handcuffs; just the bracket on the blue box
5 was loose and everything fits around that blue box, his
6 belly chain and everything else, that when the lieutenant
7 pulled out that -- that metal ring, it just went apart.

8 Q. Okay. And was it a defective blue box?

9 A. No, sir.

10 Q. Was it used on Mark Soliz again?

11 A. To my knowledge, a blue box is a blue box to me,
12 sir. I don't know how to distinguish between one or the
13 other, it's blue and they -- they bring me -- they bring
14 to me the restraints that I'm supposed to use and that's
15 what I use.

16 Q. Well, regardless, I guess, as to whether it was
17 a mistake on the part of the CO or what have you, Soliz
18 never did attack anyone or do anything or try to escape
19 that; he even kind of laughed about it, didn't he?

20 A. Yes, sir, he -- he -- yes, sir.

21 Q. And, you know, you indicated, Corporal McCowan,
22 in response to the Prosecutor's questions about
23 sophisticated inmates and sophisticated convicts and
24 things of that nature. You recall that?

25 A. Yes, sir.

1 Q. And, obviously, you know that Mark Soliz has
2 been convicted of capital murder, and you are here as
3 part of the Prosecution team to put together some
4 evidence at the Punishment Phase to show that he's a
5 danger. Is that what you're trying to do?

6 A. Sir, all I know is I was subpoenaed to come to
7 this courtroom to testify in this case. That's what I
8 know.

9 Q. Okay. And all I'm getting at is when we look at
10 the situation with the blue box, the inference is, is
11 that somehow he was able to take this contraption, even
12 he was cuffed with a belly chain on it, to somehow
13 manipulate and take whatever portions you may take out of
14 that to have the blue box inoperable. Is that what
15 you're telling this Jury?

16 A. Sir, all I'm saying is, is when Mark Soliz came
17 back from court on February 28th, in C-1 infirmary in
18 that little room that's no bigger than probably this
19 witness area here, he came back, and that little metal
20 bracket was not where it was supposed to be, and that
21 when the lieutenant pulled it out, everything fell
22 apart. That's what I'm testifying to.

23 Q. Okay.

24 A. I cannot speculate how it happened.

25 MR. HEISKELL: Okay. Well, okay. I

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1 appreciate that. Thank you.

2 That's all I have, Judge.

3 FURTHER REDIRECT EXAMINATION

4 BY MR. STRAHAN:

5 Q. And when Lieutenant Boggess asked him,
6 specifically Soliz, if he did it, he said yeah?

7 A. Yeah.

8 Q. He admitted he did it?

9 A. He laughed.

10 Q. Thought it was funny. Okay. And theoretically,
11 somebody, if their handcuffs are tight enough in the
12 jail, they shouldn't be able to get out of the handcuff
13 either, correct?

14 A. Normally, no, sir.

15 Q. Okay. And have you seen inmates who will
16 manipulate the guards, pull -- pull their hands or even
17 maybe pin their hand against a door in order to keep
18 their handcuffs from getting any tighter? Has that
19 happened?

20 A. I've seen it happen, yes, sir.

21 Q. Trying to manipulate the situation, correct?

22 A. Yes, sir.

23 Q. Okay. And since we're on the subject, do you
24 think Mark Soliz is dangerous?

25 A. Yes, sir.

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1 Q. Very?
2 A. Uh, yes, sir.
3 MR. STRAHAN: I'll pass the witness.
4 MR. HEISKELL: Just a second, Judge.
5 (Pause in proceeding.)
6 FURTHER RECROSS-EXAMINATION

7 BY MR. HEISKELL:

8 Q. Corporal McCowan, I noticed -- the reason I
9 paused is that you paused when the Prosecutor asked that
10 question. Before, he said "Very?", you paused and gave
11 us "yes, sir." You've been in the prison system for a
12 number of years; is that right?

13 A. Yes, sir.

14 Q. And you've seen dangerous people before?

15 A. Yes, sir, I have.

16 Q. A lot more dangerous than Mark Soliz, haven't
17 you?

18 A. I'm not God, sir.

19 MR. HEISKELL: Okay. Thank you. That's
20 all.

21 FURTHER REDIRECT EXAMINATION

22 BY MR. STRAHAN:

23 Q. Do you think he's very dangerous?

24 A. Yes, sir, I do.

25 Q. Do you think he's manipulative?

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1 jail.
2 Q. Okay. And specifically what are your job duties
3 there at the jail?
4 A. To make -- make sure the -- for the safety of
5 the inmates, do routine searches, stuff like that.
6 Q. Okay. And how long have you been employed with
7 the Johnson County --
8 A. Going on five months.
9 Q. Five months?
10 A. Yes, sir.
11 Q. Okay. And where were you employed before that?
12 A. I was a truck driver.
13 Q. Okay. Which job do you like better?
14 A. They both have their perks.
15 Q. I understand. Okay. And what kind of training
16 did you receive to make you qualified to work in the
17 jail?
18 A. They done -- we done -- we went through a
19 one-week class and then we done training with the other
20 officers that have more seniority.
21 Q. Okay. And so you have been with this particular
22 jail for -- I guess this is the only jail you've worked
23 at?
24 A. Yes, sir.
25 Q. So you've been in this line of work for about

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1 A. Yes, sir, I do.
2 Q. Do you think he's crafty?
3 A. Yes, sir.
4 Q. Do you think he's sophisticated in a criminal
5 sort of way?
6 A. Yes, sir.

7 MR. STRAHAN: I pass the witness.

8 MR. HEISKELL: No further questions, Judge.

9 THE COURT: May the witness be excused?

10 MR. STRAHAN: Yes, sir. Thank you.

11 THE COURT: Thank you. You may be excused.
12 (Witness excused.)

13 MR. STRAHAN: We would call Corrections
14 Officer Pierce.

15 THE COURT: Please raise your right hand.
16 (Witness sworn.)

17 THE COURT: Thank you. Please have a seat.

18 DELBERT PIERCE,

19 Having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. STRAHAN:

22 Q. Would you state your name, please.

23 A. Delbert Pierce.

24 Q. And how are you employed?

25 A. I'm a Housing Control Officer for Johnson County

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1 five months?
2 A. Yes, sir.
3 Q. Okay. And are part of your duties to search
4 inmates' cells to look for contraband?
5 A. Yes, sir.
6 Q. And just, generally speaking, let's limit
7 ourselves to the minimum security areas. Do you work in
8 those areas some?
9 A. No. I mostly work C-1.
10 Q. Okay. What is C-1?
11 A. It's -- it's more of a medium/maximum security.
12 Q. Okay. And do you also sometimes work in the
13 Ad-Seg cell area?
14 A. Yes, sir.
15 Q. Okay.
16 A. Yes, sir.
17 Q. In the medium to maximum security areas, how
18 often do you actually conduct searches of cells?
19 A. We do them every three days or if the inmates
20 has been removed for any reason of his cell.
21 Q. Okay. So if an inmate were to go to the doctor
22 or to court or something like that or a visitation, you
23 might search their cell then?
24 A. Yes, sir.
25 Q. Because they wouldn't really expect it to be

1 searched, necessarily?

2 A. Right.

3 Q. Okay. If -- do you have times where you sweep
4 and do like an entire floor at the same time?

5 A. No, sir. We just pretty much focus on whatever
6 cell that's available, that's open.

7 Q. Okay. And so I guess the idea would be so the
8 other inmates couldn't let somebody else know that
9 they're searching or something; is that right?

10 A. Yes, sir.

11 Q. Okay. And have you had the -- a cause to search
12 Mark Soliz's cell?

13 A. We just -- we just done them randomly.

14 Q. Okay. But have you done that on more than one
15 occasion?

16 A. Yes, sir.

17 Q. Did you do that on January 3rd, 2012?

18 A. Yes, sir.

19 Q. Okay. And tell us, generally speaking, how do
20 you conduct a cell search?

21 A. Once the inmate is -- is gone from the cell, we
22 basically go in and we just start going through their --
23 their belongings from top to bottom of the cell. I mean,
24 no part in the cell is untouched.

25 Q. What about are there crevices or hiding places

1 just within the cell just because of the construction?

2 A. Some of them, there is; some of them, there is
3 not.

4 Q. I mean, this is not one just solid block of
5 cement, is it?

6 A. Yes, the walls are but --

7 Q. Are there sinks?

8 A. There is some -- there's some places where the
9 walls are placed together. They have like a silicone gel
10 in between them that has been removed on some.

11 Q. What about sinks and toilets and things of that
12 nature?

13 A. There are sinks and toilets in there, yes, sir.

14 Q. Are they also places that things can be hidden?

15 A. Yes, sir.

16 Q. On the January 3rd, 2012 search, did you, in
17 fact, search Mark Soliz's room in Ad-Seg?

18 A. Yes, sir.

19 Q. Okay. And did you find any contraband?

20 A. Yes, sir, we did.

21 MR. STRAHAN: May I approach, Your Honor?

22 THE COURT: Yes, sir.

23 Q. I'm going to hand you what has been marked as
24 State's Exhibit 489. And I'm going to ask you, have you
25 seen these items before?

1 A. Yes, sir.

2 Q. And were these items found by you and another
3 officer in the cell of this Defendant, Mark Anthony
4 Soliz?

5 A. Yes, sir, they was.

6 Q. Was this on January 3rd, 2012?

7 A. Yes, sir, it was.

8 Q. Okay. What do the three items appear to be in
9 State's 489?

10 A. One part of it is -- appears to be a portion of
11 a -- a coffee cup. The other one is a battery that they
12 use as what we call a fishing line.

13 Q. Okay. Is that --

14 A. And then --

15 Q. Go ahead.

16 A. And then the other one is, from what I'm looking
17 at, looks like part of a boxer rim.

18 Q. Do you know how -- with your training and
19 experience so far there in the jail, do you know how
20 these different items could be used by an inmate? You
21 mentioned the battery.

22 A. Yeah, the battery they use basically to
23 transport stuff around through the cells.

24 Q. Okay. What about the other two items?

25 A. This item here, I mean, it could be used as any

1 kind of a weapon because of the sharp points.

2 Q. Okay. And what about the waistband?

3 A. The waistband, it could be anything from wrapped
4 around, hold the weapon or to strangle somebody with.

5 Q. Okay. So would you consider that to be possibly
6 a weapon as well?

7 A. Yes, sir.

8 Q. And so -- okay. And are these the correct items
9 that were found, the contraband items that were found in
10 the cell of Mark Anthony Soliz on January 3rd?

11 A. Yes, it was.

12 MR. STRAHAN: Okay. At this time, Your
13 Honor, I'll offer State's 489.

14 MR. HEISKELL: No objection, Your Honor.

15 THE COURT: Admitted.

16 (State's Exhibit No. 489 admitted.)

17 Q. (BY MR. STRAHAN) Now, have you, in your
18 training and experience, seen people in the cells take
19 ordinary items like pieces of metal or toothbrushes and
20 sharpen them to make them a more dangerous weapon?

21 A. We have.

22 Q. Okay. Let me show you this piece of plastic
23 that's found within there. Does that appear to have been
24 sharpened on some cement?

25 A. It -- it -- it appears to me that it has been

1 altered.

2 Q. Is that because of the smoothness right there
3 and the color change?

4 A. Yes, sir.

5 Q. Okay. Okay. Can you see on your screen what
6 I'm pointing to right there?

7 A. Yes, sir, I can.

8 Q. Is that the sharp edge of this hard piece of
9 plastic?

10 A. Yes, sir.

11 Q. Does that appear to be discolored from the rest
12 of the piece of plastic?

13 A. Yes, sir, it does.

14 Q. Does that appear to have been sharpened
15 intentionally?

16 A. It does.

17 Q. Okay. And if you turn it over, there's a sharp
18 point to it; is that correct?

19 A. Yes, sir, there is.

20 Q. Okay. And then, of course, we have the elastic
21 or the band in there and also the battery which
22 appears -- when it focuses -- to have a string wrapped
23 around it; is that correct?

24 A. Yes, sir, it does.

25 Q. And could you explain to us how that is worked

1 tell us what that is?

2 A. This here is magnets that have been either taken
3 off of headphones that they're -- that they have in their
4 possession or, I mean, that's the only thing I can figure
5 it was, it came off of a set of headphones.

6 Q. And what's the other item, just generally?

7 A. The other item is a ink pen sleeve wrapped
8 with a piece of paper around it with a string tied
9 around it.

10 Q. Okay. And are these contraband items found
11 within the cell of Mark Soliz --

12 A. Yes, sir --

13 Q. -- on January 6th?

14 A. -- they are.

15 Q. Is that a yes?

16 A. Yes, sir.

17 Q. Okay. Are these things that are given out by
18 the commissary?

19 A. The headphones are. They're issued. But when
20 they're taken apart and like the magnets are crushed
21 apart, then they're considered contraband because
22 they're taken out of their origin, original state.

23 Q. Can you see if these are the same items you
24 actually found in Mark Soliz's cell?

25 A. Yes, sir.

194 1 to move contraband or mail or whatever between inmate to
2 inmate in cells.

3 A. One inmate will take from one end of Seg,
4 somehow or another they'll get it under their door, but
5 they'll shoot it down the mezzanine. And another inmate
6 will throw another one out and they'll catch it, wrap
7 them together, pull it in their tank. They'll tie
8 whatever they want to tie onto it, and then the other
9 one will pull it back.

10 Q. Okay. And does that piece of plastic look like
11 the cups that you serve the inmates' drinks in?

12 A. Yes, sir.

13 MR. STRAHAN: Okay. May I publish this to
14 the Jury?

15 Q. Now, did you also go in and search Mr. Soliz's
16 cell on January 6th of 2012?

17 A. Yes, sir, we did.

18 Q. Okay. And did you also find some contraband on
19 that date?

20 A. Yes, sir. Yes, sir.

21 MR. STRAHAN: Okay. May I approach, Your
22 Honor?

23 THE COURT: Yes, sir.

24 Q. I'm going to hand you what has been marked as
25 State's Exhibit 490. Can you take a look at that and

196 1 MR. STRAHAN: Okay. At this time, Your
2 Honor, I'll offer State's 490 and its contents.

3 MR. HEISKELL: No objection, Judge.

4 THE COURT: Admitted.

5 (State's Exhibit No. 490 admitted.)

6 Q. (BY MR. STRAHAN) Now, let me ask you this.
7 Where specifically did you find these magnets?

8 A. The magnets was up under the bunk.

9 Q. Okay. Is the bunk made of metal or is it --

10 A. Yes, sir.

11 Q. -- metal parts?

12 A. Yes, sir, it's a metal bed.

13 Q. What would be the use for an inmate to put his
14 magnets up under the bunk of a bed, a metal bed?

15 A. They can attach anything, any metal object up to
16 it to where it would hold it up out of sight.

17 Q. Okay. So if there were a piece of metal,
18 magnets are already stuck to the bunk, you could put the
19 metal and it will stick?

20 A. Yes, sir.

21 Q. And where did you find this ink pen wrapped in
22 this paper sleeve with string on it?

23 A. The pen was up under the -- the toilet and the
24 sink is all made in one, and the ink pen was up
25 underneath the toilet.

1 Q. Okay. Would this item be contraband?
 2 A. Yes, sir, it would.
 3 Q. Do you think that this item, the pen, the way
 4 it has been wrapped with paper and also wrapped again
 5 with the string, do you think that that could be used as
 6 a weapon?
 7 A. Yes, sir, it could.
 8 Q. Now, do the inmates in Ad-Seg especially have
 9 any face-to-face contact with other inmates?
 10 A. Yes, sir, they do.
 11 Q. They do?
 12 A. Oh, other inmates, no, sir. No, sir.
 13 Q. Other inmates, okay. Do they have face-to-face
 14 visits with anyone else besides guards and/or doctors or
 15 nurses?
 16 A. No, sir.
 17 Q. Okay. Does this look like a weapon to you?
 18 A. Yes, sir, it does.
 19 MR. STRAHAN: May I publish this to the
 20 Jury?
 21 THE COURT: Yes, sir.
 22 MR. STRAHAN: I'll pass the witness.
 23 MR. HEISKELL: Your Honor, could I wait
 24 until they've finished reviewing that before I do my
 25 Cross?

1 THE COURT: Okay.
 2 MR. HEISKELL: Thank you.
 3 (Pause in proceeding.)
 4 MR. HEISKELL: May I proceed, Your Honor?
 5 THE COURT: Yes, sir.
 6 CROSS-EXAMINATION
 7 BY MR. HEISKELL:
 8 Q. Officer Pierce?
 9 A. Yes, sir.
 10 Q. My name is Mike Heiskell. I have some questions
 11 for you, sir. You've been with the jail for five months;
 12 is that correct, sir?
 13 A. Yes, sir.
 14 Q. And I want to show you again State's No. 489,
 15 which is admitted, and shows this -- I think you call it
 16 a fishing line that has the silver battery?
 17 A. Yes, sir.
 18 Q. And you explained to the Jury that fishing line,
 19 of course, is used if a person can throw down the
 20 hallway, so to speak, and get to some other inmate and
 21 may tie something to it and pitch it back?
 22 A. Yes, sir.
 23 Q. Is that right?
 24 A. Yes, sir.
 25 Q. And that's a common thing used in jails all over

1 the country; isn't that true?
 2 A. I don't know about all over the country, but
 3 I've witnessed it here.
 4 Q. Okay. Well, okay, you've been here five months.
 5 Okay. I shouldn't maybe ask you that question. But let
 6 me look -- have you look now at this broken cup or
 7 partial plastic cup.
 8 A. Okay.
 9 MR. HEISKELL: And, Judge, could I ask him
 10 to step in front of the Jury real quick?
 11 THE COURT: Yes, sir.
 12 MR. HEISKELL: Could you step down, sir.
 13 (Witness complied.)
 14 Q. Officer Pierce, you stated earlier in response
 15 to the Prosecutor's question that this area of the cup,
 16 the broken part of the cup --
 17 A. Yes, sir.
 18 Q. -- had the discoloration, which is here, is that
 19 right, the brown area; is that right?
 20 A. Yes, sir. Yes, sir.
 21 Q. Now, this is a coffee cup, is it not?
 22 A. Yes, sir.
 23 Q. And we also see in this brown area a brown stain
 24 here, do we not?
 25 A. Yes, sir.

1 Q. And that stain is similar to what we see here on
 2 what the Prosecutor said is evidence of it being
 3 sharpened; isn't that true?
 4 A. Yes, sir.
 5 Q. Let's go down here and show this Jury. That is
 6 the brown stain that we see here, and again, my finger is
 7 right here pointing toward it, on this cup. You see
 8 that?
 9 A. Yes, sir.
 10 Q. The same color as what the discoloration the
 11 Prosecutor said is evidence of it being sharpened by
 12 someone, correct?
 13 A. Yes, sir.
 14 Q. And coffee cups hold coffee, right?
 15 You can take your seat.
 16 And coffee is brown or black in color,
 17 isn't it?
 18 A. Yes, sir, it is.
 19 Q. And this is consistent with a coffee stain on
 20 this particular piece of broken cup, is it not?
 21 A. Yes, sir.
 22 Q. Well, if you sharpen something on whatever piece
 23 of metal or hard object using this plastic, then that --
 24 certainly, you can see the edges here that are white --
 25 it would produce a white color as opposed to a brown

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1 color. Isn't that true, Officer Pierce?

2 A. I don't know that.

3 Q. So that opinion that you gave this Jury earlier
4 about it being sharpened, by Mark Soliz perhaps, is based
5 upon what the Prosecutor asked you, but you also see
6 that's consistent with a coffee stain?

7 A. Yes, sir.

8 Q. Now, this, which is State's No. 90 -- 490,
9 excuse me, this again is a fish -- part of a fishing
10 line; is that right? The pen, I'm sorry, the pen I'm
11 referencing earlier.

12 A. Okay.

13 Q. Is that correct, sir?

14 A. It's not part of a fishing line, no, sir.

15 Q. Well, you see that -- well, you see the string
16 attached here?

17 A. Yes, sir.

18 Q. So that could be used as a fishing line,
19 correct, this particular object with the string?

20 A. I guess it could. I don't know.

21 Q. Okay. And when you look at something like this
22 broken cup together with the -- back to 489 now -- this
23 waistband, you see that?

24 A. Yes, sir.

25 Q. What can happen is that a person can use this to

1 A. No, sir.

2 Q. And, again, you said this looks a lot like a
3 weapon to you; is that correct?

4 A. Yes, sir.

5 Q. And is it possible that --anything is possible,
6 I guess, with a piece of string on it to be used as a
7 fishing line; is that correct?

8 A. Yes, sir.

9 Q. Is it also possible for somebody to get stabbed
10 with this, which is State's 490?

11 A. Yes, sir.

12 Q. It was hidden, correct?

13 A. Yes, sir, it was.

14 Q. These other items were also hidden; is that
15 correct?

16 A. They was out of sight, yes, sir.

17 MR. STRAHAN: I'll pass the witness.

18 MR. HEISKELL: Nothing further, Judge.

19 THE COURT: May the witness be excused?

20 MR. STRAHAN: Yes, sir.

21 THE COURT: Thank you. You may be excused.
(Witness excused.)

22 MR. STRAHAN: May we approach?

23 (At the bench.)

24 MR. STRAHAN: I had one other witness for

202 204
1 pick out a piece of this waistband to make a string out
2 of it, to pull that so that a string can be pulled from
3 here; isn't that true?

4 A. I guess it could.

5 Q. Okay. And that way, you can use this to pull
6 it out and make a string for a fishing line for
7 communication purposes with other inmates; isn't that
8 true?

9 A. Yeah.

10 MR. HEISKELL: Pass the witness.

11 REDIRECT EXAMINATION

12 BY MR. STRAHAN:

13 Q. Do you think it's ironic that the only smooth
14 part of the broken cup that seems to be discolored is
15 right on this pointed edge? Does that make sense to
16 you?

17 A. Yes.

18 Q. Right here, the rest of that smooth, broken
19 edge doesn't have a mark on it, does it?

20 A. No, sir.

21 Q. Okay. And do you recall where this specific
22 item was found in the cell?

23 A. It was found inside of a bag of Mark Soliz's,
24 his personal property.

25 Q. Did you find the rest of the cup?

1 today. He has bronchitis and actually gone to the
2 emergency room, so I think we're probably done for the
3 day, if that's okay. I had one more but...

4 (Sotto voce discussion.)

5 MR. HEISKELL: Just a second, Judge.

6 MR. STRAHAN: He's very sick, has been for
7 two days. I thought he would be here this afternoon but
8 he's not, so that's kind of where we are.

9 MR. HEISKELL: Do you think he'll be here
10 tomorrow?

11 MR. STRAHAN: I don't know. If he's still
12 sick, he won't. But in any event, we have other
13 witnesses to call. I planned on rounding the day with
14 him, but that's where I am.

15 MR. HEISKELL: Okay.

16 THE COURT: Can I tell him he has
17 bronchitis?

18 MR. STRAHAN: Well, if he's still sick,
19 he'll never show up tomorrow and I'll just leave him
20 alone.

21 (In open court.)

22 THE COURT: All right. Ladies and
23 gentlemen, we're at the end of the day for today.
24 Appreciate all the time that you've put in. And
25 scheduling our witnesses is sometimes a complicated

1 matter for the Court. I'm going to excuse you for the
2 rest of the day. Please remember all the instructions
3 that I've given you, and be back here again, ready to
4 go in the morning.

5 (Court adjourned.)

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1 THE STATE OF TEXAS)

2 COUNTY OF JOHNSON)

3 I, Pamela K. Waits, Official Court Reporter
4 in and for the 413th District Court of Johnson County,
5 State of Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in the
9 volume of the Reporter's Record, in the above-styled and
10 numbered cause, all of which occurred in open court or in
11 chambers and were reported by me.

12 I further certify that this Reporter's Record
13 of the proceedings truly and correctly reflects the
14 exhibits, if any, admitted by the respective parties.

15 WITNESS MY OFFICIAL HAND this the 31 day
16 of December 2012.



Pamela K. Waits, Texas CSR #4991
Expiration Date: 12/31/13
Official Court Reporter
413th Judicial District
Johnson County, Texas
204 S. Buffalo Avenue
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STATE VS. MARK ANTHONY SOLIZ

MARCH 14, 2012

1

1 REPORTER'S RECORD

2 VOLUME 50 OF 75 VOLUMES

3 TRIAL COURT CAUSE NO. F45059

4 COURT OF CRIMINAL APPEALS NO. AP-76,768

5 STATE OF TEXAS) IN THE DISTRICT COURT
6 VS.)
7 MARK ANTHONY SOLIZ) JOHNSON COUNTY, TEXAS
8)
9) 413TH JUDICIAL DISTRICT

10 JURY TRIAL

11 PUNISHMENT PHASE

12
13
14
15
16
17 On the 14th day of March, 2012, the following
18 proceedings came on to be heard in the above-entitled and
19 numbered cause before the Honorable William C. Bosworth,
20 Jr., Judge presiding, held in Cleburne, Johnson County,
21 Texas:

22 Proceedings reported by Machine Shorthand and
23 Computer-Aided Transcription.

24
25 ORIGINAL

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2

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3

1 I N D E X

2 VOLUME 50

3 PUNISHMENT PHASE

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5	493	Photo (8x10)		60	60 50
6	494	Photo (8x10)		60	60 50
7	495	Photo (8x10)		-60	60 50
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DEFENDANT'S					
9	7	NO.	DESCRIPTION	OFFER	ADMIT VOL.
10	28	TDCJ Unit Classification Procedure		69	69 50
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PROCEEDING

(Open court, Defendant present;

Jury not present.)

THE COURT: Is the State ready to proceed?

MS. JACK: State's ready, Your Honor.

THE COURT: Defense ready?

MR. HEISKELL: Yes, Your Honor.

THE COURT: Defendant is present. Jury
ready? Please bring in the Jury.

(Jury present.)

THE COURT: You may be seated.

MS. JACK: We call Dr. Raj Gandhi, Your
Honor.

THE COURT: Please raise your right hand.

(Witness sworn.)

THE COURT: Thank you. Please have a seat.
Okay.

MS. JACK: Thank you, Your Honor.

RAJESH GANDHI,

Having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. JACK:

Q. Dr. Gandhi, would you please tell the Jury your
name and how you're employed.

A. Rajesh Gandhi. I'm the Trauma Medical Director

1 A. In this region, besides John Peter Smith,
2 there's Dallas Children's, Parkland, and Baylor. Both --
3 all three of those are in Dallas County.4 Q. So John Peter Smith, as it exists right now, as
5 it existed in 2010, is somewhat the state of the art in
6 terms of Level One Trauma Centers now?

7 A. Yes, ma'am.

8 Q. All right. And you're the head of the trauma
9 center now?

10 A. Yes, ma'am.

11 Q. Can you tell the members of the Jury your
12 educational background?13 A. Sure. Went to college in Massachusetts,
14 Cambridge, Massachusetts at Massachusetts Institute of
15 Technology. I went to medical school in Albany, New
16 York, and then did my residency in general surgery at
17 New York Medical College; after which I did a two-year
18 fellowship in adult and pediatric trauma and critical
19 care at the University of Pennsylvania in Philadelphia.20 Q. Can you give the Jury an idea of your
21 professional background as well.22 A. What I do every day basically is to take care of
23 sick people, very sick people, both in general surgery as
24 well as trauma. So those people that most of the other
25 general surgeons wouldn't want to take care of, we take

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1 at John Peter Smith through Texas Healthcare.

2 Q. All right. Can you tell the members of the Jury
3 a little bit about John Peter Smith Hospital.4 A. Sure. John Peter Smith is about a 567-bed
5 hospital, county hospital in Tarrant County. It's the
6 only Level One Trauma Center in Tarrant County.

7 Q. What is a Level One Trauma Center?

8 A. Level One Trauma Center basically means that
9 it's a one-stop shopping. You go there whether you're
10 hurt, head, neck, chest, belly. The only thing we don't
11 do is big, big, bad burns; those, we send to Parkland.
12 Parkland is the only burn center we have in this region.
13 Then the other thing we don't do is reimplantation
14 because we won't see enough to keep us very good at it.
15 So that's the only two things that we don't do, but
16 everything else we pretty much take care of.17 Q. Has John Peter Smith always been a trauma one or
18 a Level One Trauma Center?19 A. No. When I got to Peter Smith, which was in
20 August of 2007, it was a Level Two Trauma Center. And I
21 was recruited to bring John Peter Smith to be a Level One
22 Trauma Center, so we did that. In November of 2009, we
23 had our verification.24 Q. All right. How many different Level One Trauma
25 Centers are there in this region?1 care of them. We also take care of, obviously, very sick
2 trauma patients. So that's kind of what I do every day.
3 And the other part of my job is my administrative duties
4 as a Trauma Director at John Peter Smith.5 Q. Okay. Can you tell the members of the Jury what
6 certifications you hold.7 A. I have a board certification in general surgery
8 and surgical critical care.9 Q. All right. Can you tell them about your
10 academic responsibilities.11 A. Academically, what we do is we do quite a bit of
12 research, and so I'm involved in different research
13 around John Peter Smith and different collaborations,
14 some with Parkland, some with other institutions around
15 the area as well, as well as around the region or around
16 the state.17 Q. Can you give the Jury an idea of the honors that
18 you've received in terms or in connection with your
19 expertise in surgery.20 A. There's -- we -- I have different honors in
21 terms of being listed in Who's Who, also in terms of
22 being asked to speak and lecture at different venues
23 around the country and around the world. So those --
24 those would be some of the honors.

25 Q. Okay. And you're being a little bit modest, are

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1 you not, Dr. Gandhi?
 2 A. Yes, ma'am.
 3 Q. Okay. You're one of the best surgeons in 2011
 4 in the United States?
 5 A. Yes, ma'am.
 6 Q. Okay. Now, you've been at John Peter Smith
 7 since 2007; is that correct?
 8 A. Yes.
 9 Q. All right. Were you one of the treating
 10 physicians, one of the surgeons for Ruben Martinez?
 11 A. Yes. I was in the Intensive Care Unit when
 12 Mr. Martinez had come in. So after he was there, I was
 13 there for his last seven days.
 14 Q. All right. And approximately how long was he at
 15 John Peter Smith hospital?
 16 A. About 13 days.
 17 Q. All right. From June the 29th until July 12th;
 18 is that correct?
 19 A. Yes, ma'am.
 20 Q. All right. And have you prepared a short
 21 PowerPoint presentation that kind of gives an overview of
 22 the treatment and the procedures that Mr. Martinez
 23 underwent while he was in your care?
 24 A. Yes, ma'am.
 25 MS. JACK: All right. May I approach the

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1 of medical records regarding Ruben Martinez?
 2 A. Yes, ma'am.
 3 Q. Did you also review the autopsy in connection
 4 with Mr. Martinez?
 5 A. I did.
 6 Q. Okay. And looking at State's Exhibit 491, would
 7 this model of the torso of an individual aid you in your
 8 explanation to the Jury in terms of what injury Ruben
 9 Martinez sustained and the complications that arose as a
 10 result?
 11 A. I think it would.
 12 MS. JACK: Okay. Your Honor, at this time,
 13 the State would offer State's Exhibit 491 into evidence
 14 simply for demonstrative purposes.
 15 MR. HEISKELL: No objection, Your Honor.
 16 THE COURT: Admitted.
 17 (State's Exhibit No. 491 admitted for
 18 demonstrative purposes only.)
 19 Q. (BY MS. JACK) All right. Doctor, we'll just
 20 leave that up there. Now, can you tell the members of
 21 the Jury what it means when we talk about how a patient
 22 presented.
 23 A. Basically what it means is what the patient
 24 looks like when they first come in. So any -- any
 25 patient who comes in, how they look, what are they doing,

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1 witness, Your Honor?
 2 THE COURT: Yes, you may.
 3 Q. Doctor, I'm showing you what's been marked as
 4 State's Exhibit 492. And is State's Exhibit 492 a disk
 5 that contains your PowerPoint presentation?
 6 A. Yes, ma'am.
 7 MS. JACK: Okay. Your Honor, at this time,
 8 the State would offer State's Exhibit 492 into evidence
 9 for demonstrative purposes.
 10 MR. HEISKELL: For demonstrative purpose
 11 only, Judge, we have no objection.
 12 THE COURT: Admitted.
 13 (State's Exhibit No. 492 admitted for
 14 demonstrative purposes only.)
 15 (State's Exhibit No. 492, CD with no audio,
 16 playing simultaneously in open court.)
 17 Q. (BY MS. JACK) Dr. Gandhi, I'm going to give you
 18 the remote and laser pointer. All right. Now, in
 19 preparation for your testimony, did you -- did you review
 20 all the medical records in connection with this case?
 21 A. I did.
 22 Q. All right. And I believe you have the file
 23 folder in front of you --
 24 A. Yes, ma'am.
 25 Q. -- with some, I don't know, 3 to 4 inches worth

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1 what are they not doing. Basically kind of, you know, if
 2 you go to a scene or you see something happen, what's that
 3 person look like right there, they're on the ground, you
 4 know, are they doing something, are their eyes open, are
 5 they not open, are they talking, they're not talking.
 6 What's going on, basically.
 7 Q. Okay. Can you tell the members of the Jury how
 8 Ruben Martinez presented.
 9 A. Mr. Martinez presented, as I listed here,
 10 unresponsive. What that means is he's not doing anything
 11 really. He's not talking. You're not able to really
 12 wake him up. And on the history, it was listed that his
 13 G.C.S. or Glasgow Coma Scale was a 5T. So what a Glasgow
 14 Coma Scale is, basically is kind of how awake is the
 15 person. And it's got three parts.
 16 The first part is what do they do with the
 17 eyes. And if they're fully awake, you know, they're
 18 blinking, all that, they get a level of 4. His -- his
 19 was not. He wasn't doing anything with his eyes, so he
 20 gets -- he gets a 1.
 21 The second thing we look at is verbal. Are
 22 they talking? Are they confused? Can you really
 23 understand what they're saying or not understand? And it
 24 goes down to where they're not doing anything. So you're
 25 trying to pinch him and you're pushing him, you're doing

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1	something to make him talk or yell at you or do	1	again on the CAT scan, that that's what it did to the
2	something, and they're not doing anything. He gets a	2	bottom part of the brain and the top part of the spinal
3	1 for that.	3	cord.
4	What a T. means, he's got a breathing tube	4	Q. Okay. When you looked at the spinal cord, what
5	in, so we've put T. for tube.	5	did you see?
6	And then the last thing that we look at is	6	A. You don't really see much. There's just tissue
7	what we call motor, meaning what's he able to move,	7	there. You don't see what a normal spinal cord looks
8	what's he able to do. And on him, he wasn't moving	8	like. And I think I have a picture of what a normal
9	anything as well. So really 3 would have been where we	9	spinal cord looks like so you can see the big difference
10	would be at. For some reason, I think he had his eyes	10	between normal and what Mr. Martinez's looked like.
11	open and they were able to get his eyes open and so	11	Q. When you looked at Mr. Martinez's spinal cord or
12	that's why he got a little bit more than a 3.	12	the images of the spinal cord, did you, in fact, see some
13	He was also hypotensive. What that means	13	bone in that?
14	is that his blood pressure was low. Usually it means	14	A. Yes.
15	that it's much lower than normal and usually we need to	15	Q. Is there normally supposed to be bone in a
16	do something about it, either give him fluid or give	16	spinal cord?
17	blood or do something because his blood pressure isn't	17	A. No. What happened was, again, as the bullet
18	normal. So --	18	went through, it went through bone, it's going to push
19	Q. You can go ahead, Doctor.	19	that bone to the front of it. It's going to go through.
20	A. I'm sorry?	20	And so that's how that bone got into the middle of the
21	Q. You can continue, Doctor.	21	spinal cord, which normally doesn't have bone. Again,
22	A. Thank you. So again, from the records, the	22	that bone also kind of helped, you know, blenderize all
23	gunshot, the trajectory or where the gunshot went started	23	that tissue inside and as it kind of went through.
24	about up here and it ended about here. So you can see,	24	Q. You mentioned the location of the injury. What
25	if I kind of go like this, it kind of went through this	25	part of the spine was that?
	14		16
1	area, kind of went through this area that you can't see,	1	A. That was the first bone, the first part of the
2	this whole area. And we'll show you pictures of kind of	2	spinal column. That's where it was. What the spinal
3	that area on a CAT scan. But basically it went the	3	column does is the brain is kind of our neuro network,
4	bottom part of the brain and the first vertebral body,	4	right. That's what controls everything in the body.
5	the first neck bone, if you will.	5	That control goes out; the communication to the rest of
6	Q. And, Doctor, looking at the autopsy and looking	6	the body is through the spinal cord. So if you cut the
7	at the medical records, you showed the Jury the path of	7	spinal cord, which is basically what happened, none of
8	the bullet. Can you tell the Jury where the entrance	8	those signals go to anywhere in the body. So that's why
9	wound would have been and where the exit would have been,	9	he wasn't able to move anything or do anything. And
10	which was which.	10	since it was so high, he actually couldn't move his
11	A. Yeah. According to the autopsy report, the	11	facial muscles either, so he couldn't talk or do anything
12	entrance was up here, and the exit was 8 inches down from	12	else.
13	the top and 8 inches kind of from the front to the back.	13	He had what we call locked-in syndrome, and
14	So somewhere around here. So it was, again, this kind of	14	all he could do was blink his eyes. So that's how we
15	trajectory, going this way.	15	were able to communicate with him down the line is with
16	Q. Now, when the path of the bullet -- when a	16	him blinking his eyes.
17	bullet takes that kind of path, what does it do to the	17	Q. In fact, Doctor, how many thousands of patients
18	body?	18	have you seen over the years?
19	A. Again, a bullet is very high speed, high	19	A. Many thousands.
20	velocity, and so it does a lot of damage. And it's kind	20	Q. Okay. Do you remember Mr. Martinez in
21	of -- when it goes through, especially brain and other	21	particular?
22	tissue, anything in the path is kind of almost like	22	A. I do.
23	it's blenderized, you know what I mean. It kind of takes	23	Q. Why do you remember him?
24	it and it just smushes up all the tissue in its way. And	24	A. You know, we -- every now and again there's --
25	that's what it would have done. And you'll see that	25	there's a patient who, who, you know, is just kind of

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1 a salt of the earth person, and something, you know,
 2 horrible happens and just devastates the family,
 3 devastates our staff and the physicians as well because
 4 you don't like to see, you know, bad things happen to
 5 good people like that. And what we want to do is make
 6 them better and get them back to -- you know, he was a,
 7 you know, a bread truck driver -- get him back to driving
 8 trucks. That's what we would love to do, but in this
 9 case, it was impossible because, again, his spinal cord
 10 was completely severed. There's nothing we can do to put
 11 it back together.

12 Q. From the moment he sustained that gunshot wound,
 13 at a minimum, what was he looking at?

14 A. He had a very, very high mortality rate. So at
 15 best, his -- his survival, at best, would have been a 50
 16 percent two-year survival.

17 Q. Okay. Would he have been able to move his hands
 18 or his arms or his legs?

19 A. Never.

20 Q. Ever again?

21 A. Never. And also he would never have been able
 22 to breathe on his own.

23 Q. Okay. All right. And would he have been
 24 rendered a quadriplegic as well?

25 A. He was, yes.

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1 of comfort, and family at least has the ability to see
 2 their face again.

3 Q. Okay. And, in fact, do you have a slide that
 4 includes a number of procedures that Mr. Martinez --

5 A. I do. So the procedures he had, again, the
 6 first thing in the trauma bay, he had a breathing tube
 7 put in. And multiple times we have to do what's called
 8 bronchoscopy. That's where we put a light, a tube that
 9 has a light and a camera in the end, down his breathing
 10 tube into his lungs and basically suck out the mucus and
 11 stuff that's there.

12 The reason we do that is he doesn't have the
 13 ability to cough up. You know, you get up in the morning
 14 and you've got something in the back of your throat, you
 15 cough it up and spit it out. He can't do that, and so we
 16 have to do that for him when it fills up too much. And
 17 so that's -- we did that multiple times.

18 Q. And for somebody that can't cough up mucus, what
 19 is that mucus like in their lungs?

20 A. It's kind of -- what happens with that mucus,
 21 especially when it dries up, and I'm sure many of you
 22 have experienced it, you get the mucus that's real dry,
 23 you cough it up. And it looks like a little piece of,
 24 like, concrete or something that's come out. And that's
 25 really what happens inside the lung is it makes casts of

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1 Q. And you've indicated on your slide over there,
 2 he had no drive to breathe. What does that mean?

3 A. Again, one of the controls from our brain is our
 4 ability to breathe normally. You know, we do that without
 5 even thinking. And again, because his spinal cord was cut
 6 so high, that ability was gone as well. So he was not
 7 going to be able to breathe. He would need to be on a
 8 breathing machine for the rest of his life.

9 Q. Were there certain procedures that John Peter
 10 Smith employed to, I guess, help comfort him in his last
 11 few days?

12 A. Yes. We do a number of different things to --
 13 again, the breathing tube that we had put down is like
 14 having a gigantic sore throat constantly. And so one of
 15 the things is to put a breathing tube that goes right
 16 into the throat. It's called a tracheostomy. And that's
 17 much more comfortable for the patients, and, you know,
 18 allows the family to be able to see the face again.
 19 Because if you look at someone who's got a breathing
 20 tube, they've got the tube coming out, they've got
 21 another tube in their mouth, they've got tape all over.
 22 You can't really see their face. And so, you know, kind
 23 of being able to see your loved one's face again makes a
 24 big difference in kind of how everybody feels. And so
 25 that's one of the things we do for the patient in terms

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1 the lung. And so that's really what we call them, casts.
 2 And because they're very thick and tenacious, it can't
 3 get off on its own. You really have to do the
 4 bronchoscopy to get all that mucus out.

5 Q. How many times a day roughly was he having to
 6 undergo this?

7 A. Well, the suctioning, he was undergoing
 8 frequently. The suctioning doesn't always get everything
 9 that's deep. And so we did that, you know, I believe at
 10 least a half a dozen times while he was in the ICU.

11 Q. Okay. And as his stay progressed, was it
 12 necessary for hospital staff to do this more and more
 13 each day?

14 A. Uh-huh.

15 Q. Why is that?

16 A. Again, because there's going to be more --
 17 again, we don't do it everyday. We do it when the
 18 patient looks like they need to have it done, because
 19 it's not something that's fun for the patient. You know,
 20 you can imagine you kind of have a breathing machine, and
 21 then when we do this, we actually suck everything out,
 22 right. So you can't breathe during that time that we're
 23 doing it. We don't do it long periods of time, but
 24 still, it's not a very comfortable procedure. We make
 25 sure the patients are sedated and all that, but still you

20

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1 can imagine that it's not a very comfortable thing, even
2 if you're sedated.

3 Q. What are some of the other procedures that you
4 and your staff tried to help Ruben feel better?

5 A. We did the tracheostomy. Again, that's the tube
6 in the throat, goes right into the trachea or the
7 windpipe. We put in what's called a filter. What
8 that -- that is basically it's a device, it looks like
9 an umbrella without the cloth on it. And it goes in one
10 of the big veins that goes to the heart. It's kind of --
11 I don't know if I can take all this apart.

12 MS. JACK: May I approach the witness, Your
13 Honor?

14 THE COURT: Yes.

15 MS. JACK: I think there's a hinge in the
16 front.

17 THE WITNESS: I was never good at playing
18 with things like this.

19 A. Okay. Basically it goes in the vein that's
20 right here, goes all the way down. And what that does is
21 it prevents clots from going to the heart and lungs and
22 killing the patient. The reason you form clots is
23 because normally we're walking, we're moving, and so the
24 blood is squeezed through our body. With him, it kind of
25 stays there. Whenever blood stays in one place, it forms

22

24

1 clots. And so we want to prevent those clots from going
2 to his heart and lungs.

3 Q. What other procedures were there?

4 A. The other thing we did is put a feeding tube in.
5 And so we always go through the mouth, check out the food
6 pipe, go down in the stomach, check out the stomach,
7 check out the first part of the intestine, make sure
8 there's no ulcers, other problems, and then we put a
9 feeding tube through that. So that was the last thing.

10 Q. And where did you insert the feeding tube?

11 A. In the stomach. It would have come out right
12 about here in the stomach.

13 Q. Was that because he couldn't swallow?

14 A. Right. He didn't have any ability to swallow.
15 And we had a tube that went down from his mouth to his
16 stomach to feed him during that time. But, again, you
17 can't leave those tubes in forever. And those tubes are
18 hard, so they can kind of cut through soft tissue, you
19 know, cut through the lips, things like that. So you
20 don't want to keep them in for long periods of time, so
21 we take them out and then we put the feeding tube in.

22 Q. Okay. What was his prognosis?

23 A. Prognosis just means how was he going to do.
24 The neurosurgeons on the first day said prognosis is
25 grim, at best, locked in. So what "grim" means is it's

1 going to be really, really, really bad. And "locked in"
2 means he can't talk to us. You know, he's got function
3 in the brain and he's thinking about stuff, but he can't
4 communicate that to us. And the way he communicated with
5 us is by blinking. And so we'd ask him yes/no questions,
6 and he would blink, you know, whichever way the answer
7 was supposed to be.

8 Q. And do you, in fact, recall talking to him or
9 communicating with him where he communicated in return by
10 blinks?

11 A. I do. And, you know, I verified in my note
12 that that's how we did talk to him. There was a time
13 when he was tired and actually we stopped, and I came
14 back later on in the afternoon to talk with him and his
15 family again.

16 Q. Do you recall having or speaking to him and
17 talking to him about his decision with regard to his care
18 and whether or not a do-not-resuscitate order would be
19 put in place?

20 A. Yes, we had that. That was one of the
21 conversations where we came back several times about
22 that. Because, again, you can imagine that you're in
23 this situation, you're doing your regular job, and all
24 the sudden one day your entire life is changed, and now
25 you've got this guy, me, standing over you or standing

1 next to you and asking you, you know, "This is what's
2 going on. I'm sorry. And, you know, you have a
3 capability of deciding for yourself what it is that you
4 want done, you know, for yourself. And unfortunately
5 because of the nature of the injury, you're never going
6 to be able to breathe on your own again. You're never
7 going to be able to walk. You're never going to be able
8 to talk. Never going to be able to feed yourself.
9 You're never going to have the quality of life that you
10 had before the injury. And so, you know, really, how
11 would you want to live, or do you want, you know, to say,
12 you know, I'll let -- I'll let God or let whatever is
13 going to happen decide what's going to happen with me."

14 And really that's what "do not resuscitate"
15 or "allow natural death" means. It's, you know, we let
16 the person's body decide. And many times we'll do
17 everything except if their heart stops, and then we stop.

18 And so that's really how we started. And
19 then he, you know, progressively said he wanted less and
20 less done. And at one point, he was very, very sick, and
21 the family decided that, you know, that's not really what
22 he would want.

23 Q. Early on when you talked to him, did he
24 communicate to you that he wanted to live?

25 A. Um, no, not -- not in that way is really not how

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	25		27
1	he wanted to live. He wanted to always be how he was, be	1	his right side and his left side.
2	productive, and really be the father and the husband that	2	This is the first ring, so that's the first
3	he's always been.	3	neck bone, if you will. And that's part of the skull.
4	Q. Okay. Did you personally counsel with the	4	And you can see all these fragments. Basically this is
5	family in terms of his care and what was available at	5	showing you some of the trajectory, you know, where the
6	John Peter Smith and his prognosis?	6	bullet went through. And these are the fragments of bone
7	A. Several times.	7	7 that were placed into the spine.
8	Q. Were those easy conversations or difficult	8	Spinal column will be in here. And you kind
9	conversations?	9	of just see some grayish stuff. And I'll show you what
10	A. They're always very difficult conversations	10	the normal will look like. And you'll see that you can
11	because, you know, you -- the -- our philosophy, my	11	actually see his spinal cord inside in some of the other
12	partners and I philosophy is that these are all our	12	images.
13	families. So he's like a brother to me, and I'm trying	13	Q. And the image the Jury is looking at right now,
14	to counsel my brother on what -- what does he want in	14	is that a radial image of Ruben Martinez?
15	terms of his life. And so it's always a very difficult	15	A. Right. This is Mr. Martinez's actual CAT scan.
16	conversation to have.	16	This is another picture of his CAT scan, and, again,
17	Q. Doctor, do you think that Ruben understood that	17	this is the spinal cord. This white over here is
18	he was dying?	18	actually blood. Then again, this solid white is
19	A. Yes.	19	all bone.
20	Q. Okay. With each day that he was at John Peter	20	This is normal. So there's no bone. And
21	Smith Hospital, was his condition worsening?	21	you can see the spinal cord right here. Which, again,
22	A. Yes.	22	over there, all of this was all the dark gray stuff.
23	Q. Okay. In the end, did he pass away at John	23	There was no difference between anything. So you really
24	Peter Smith Hospital?	24	couldn't tell what was spinal cord and what was anything
25	A. Yes, he did.	25	else.
	26		28
1	Q. And what day was that and what time was he	1	Again, this is a better picture. You can
2	pronounced?	2	see the spinal cord right easily. Over on the other
3	A. That was July 12th at 22:30 hours, 10:30 at	3	picture, you couldn't see anything and you saw the blood
4	night.	4	over here. So there's no blood here. There's a spinal
5	Q. Okay. And what was -- what was the cause of his	5	cord going down. You know, it's a nice, pretty oval kind
6	death?	6	of shape, so that's kind of a normal.
7	A. The autopsy report, cause of death was the	7	Q. Okay. Thank you very much, Doctor. Is there
8	residual complications from the gunshot wound that he	8	anything about the fact that Mr. Martinez was injured
9	sustained.	9	away from the hospital or the distance away from John
10	Q. Okay. And, Doctor, you've reviewed his medical	10	Peter Smith or the time that it would have taken to
11	records. Before June the 29th, was there any reason to	11	transport him to John Peter Smith that would have
12	believe that he would not have lived a happy, healthy	12	affected one way or another his prognosis?
13	life but for the events of June the 29th?	13	A. No. The -- you know, again, when a gunshot goes
14	A. No. He should have, if it hadn't been for those	14	through, at that time, fate has been dealt. I mean,
15	events, he should have lived, you know, anywhere between	15	there's not going to be anything that's going to change
16	74 and 84 years of age at the least.	16	what happens. The only change would have been if the
17	Q. Did you also include some slides of some radial	17	gunshot didn't occur.
18	images of his brain --	18	Q. If he had been shot in the emergency room of
19	A. I did.	19	John Peter Smith hospital, would it have changed one
20	Q. -- and of this injury?	20	single thing?
21	A. I did. Once again, complications of the	21	A. No. Again, you know, once -- once that bullet
22	perforating gunshot wound to the head was cause of death,	22	went through the spinal cord and disrupted everything, I
23	according to the autopsy report. This is a CAT scan of	23	mean, kind of blew that whole spinal cord apart, nothing
24	kind of the bottom of his head, top of his spine. And	24	was going to put it back together, unfortunately.
25	that's the top of his head or face, the back of his head,		MS. JACK: Okay. Thank you, Doctor.

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1 Your Honor, at this time I'll pass the
 2 witness for cross-examination.

3 MR. HEISKELL: No questions.

4 THE COURT: May the witness be excused?

5 MR. HEISKELL: Yes.

6 THE COURT: Thank you, sir.

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 MS. JACK: We call Stephen Rogers, Your
 Honor.

10 THE COURT: Please raise your right hand.

11 (Witness sworn.)

12 MS. JACK: May I proceed, Your Honor?

13 STEPHEN ROGERS,

14 Having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. JACK:

17 Q. Mr. Rogers, would you please tell the Jury your
 18 name and where you work.

19 A. My name is Stephen Rogers, and I work for the
 20 Texas Prison System, more commonly known now as the
 21 Texas Department of Criminal Justice.

22 Q. Okay. Can you tell the members of the Jury how
 23 long you've worked for the Texas Department of Criminal
 24 Justice.

30

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1 A. I've worked for them now for approximately
 2 29-and-a-half years.

3 Q. So you've made a career of it?

4 A. Yes, ma'am, I have.

5 Q. Okay. All right. Can you tell the members of
 6 the Jury all the different positions that you've held
 7 within -- is the acronym for the Texas Department of
 8 Criminal Justice, T.D.C.J.?

9 A. T.D.C.J.

10 Q. T.D.C.J.?

11 A. Yes, ma'am.

12 Q. Can you tell the members of the Jury the
 13 different positions that you held within T.D.C.J. over
 14 those almost 30 years?

15 A. Sure. I was a correctional officer at three
 16 different maximum security facilities for about three
 17 years. I then went into case management, which is
 18 classification. I was in -- the Chief of Classification
 19 and Assistant Chief of Classification for approximately
 20 three years. I became a Classification Coordinator for
 21 just a couple months, promoted to Assistant Warden for
 22 two years, promoted to Senior Warden for two years, and
 23 then became a State Classification Committee Member.
 24 I've been doing that for about the past 13 years now.

25 Q. What does it mean, when you talk about the word

1 "classifications", what does that mean?

2 A. What we're doing, in a nutshell, is grouping
 3 offenders according to security and treatment needs.
 4 Now, that's just a basic definition. I could go in depth
 5 to it, if you would like.

6 Q. Please do.

7 A. Basically an offender arrives. We do look at
 8 his sentence, as far as him being a first offender, the
 9 length of his sentence; at which point, we make a
 10 decision on what type of facility, prison, to place him
 11 at. We're looking at his security characteristics.
 12 We're looking at his medical needs. We're looking at
 13 educational issues, stuff like that. And then we select
 14 a facility that we think he can successfully adjust to
 15 the prison life at.

16 Also we're looking at his -- we assign him
 17 a custody. And one of my primary duties is to initially
 18 assign offenders and to select a custody, and find a
 19 facility in the system that has that custody as well as
 20 would meet any other kind of need he might have.

21 Q. Okay. Have you testified as an expert in the
 22 area of classifications at T.D.C.J.?

23 A. Yes, ma'am.

24 Q. On few or several occasions?

25 A. Many occasions.

1 Q. How many different counties have you testified
 2 in as an expert in this area?

3 A. Off the top of my head, maybe five, six
 4 different counties.

5 Q. Okay. Have you testified in Tarrant County?

6 A. Yes, ma'am -- I'm sorry, no, ma'am. I've been
 7 called a couple times, but I never had the privilege of
 8 testifying.

9 Q. You were present during the trial?

10 A. Yes, ma'am.

11 Q. And prepared to testify?

12 A. Correct.

13 Q. And the evidence came out through another
 14 witness?

15 A. Correct.

16 Q. Okay. Testified in a number of other counties
 17 as well?

18 A. Yes, ma'am.

19 Q. But this is your job and has been your job for
 20 13 years?

21 A. Correct.

22 Q. Specifically classification?

23 A. Yes, ma'am.

24 Q. All right. Now, how many different prison
 25 units, if you have an idea or general idea, are there in

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	33	<p>1 Texas?</p> <p>2 A. We currently have a hundred and eleven.</p> <p>3 Q. And does that include State Jail facilities and</p> <p>4 other prisons?</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. Okay. And State Jail felonies would be like</p> <p>7 unauthorized use of a motor vehicle, theft case, that</p> <p>8 kind of thing?</p> <p>9 A. Yes, ma'am, fourth-degree felonies.</p> <p>10 Q. Fourth-degree felonies. So the third-degree</p> <p>11 felonies and on up and including capital murder would be</p> <p>12 the other prison units; is that correct?</p> <p>13 A. That is correct.</p> <p>14 Q. All right. Now, how many different inmates do</p> <p>15 we have in custody? Give an idea of the number of</p> <p>16 inmates that we have in custody in T.D.C.J.</p> <p>17 A. As of Monday, we have a little under a hundred</p> <p>18 and fifty-five thousand.</p> <p>19 Q. Okay. And that's spread over all these</p> <p>20 different units; is that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Now, you mentioned that you had previously</p> <p>23 worked for three maximum security prisons; is that</p> <p>24 correct?</p> <p>25 A. Yes, ma'am.</p>	35
	34	<p>1 Q. What were those three units?</p> <p>2 A. Coffield, Beto and Michael.</p> <p>3 Q. All right. And what determines whether or not</p> <p>4 a unit is a maximum security unit?</p> <p>5 A. A maximum security facility or any kind of</p> <p>6 facility is defined by the strictest level of custody</p> <p>7 that unit can house and maintain. For example, the</p> <p>8 Michael Unit is considered a maximum security facility</p> <p>9 because they house maximum security offenders in</p> <p>10 Administrative Segregation.</p> <p>11 Q. Okay. Now, you mentioned Administrative</p> <p>12 Segregation. And I'll tell you the Jury has heard about</p> <p>13 the word "administrative segregation". All right. And</p> <p>14 is Administrative Segregation a type of maximum security?</p> <p>15 A. Yes, it is.</p> <p>16 Q. Is Death Row a type of maximum security?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. Where is Death Row in Texas?</p> <p>19 A. Death Row is in the Polunsky Unit in Livingston,</p> <p>20 Texas.</p> <p>21 Q. So we only have one unit for Death Row</p> <p>22 offenders?</p> <p>23 A. Correct.</p> <p>24 Q. How many different units do we have that include</p> <p>25 Administrative Segregation?</p>	36
		<p>1 He comes out one hour per day for recreation. In a</p> <p>2 nutshell, that's Administrative Segregation.</p> <p>3 General population, the offenders are free</p> <p>4 to move around without handcuffs, without escort. They</p> <p>5 live with other offenders in like general population</p> <p>6 custodies. They can have a job. They can go to school.</p> <p>7 They can go to church. If they have a medical</p> <p>8 appointment, they -- they're called out, they walk down</p> <p>9 a hallway, they walk into the medical department for</p> <p>10 their appointment; no handcuffs. There might be a</p> <p>11 correctional officer down the hallway directing traffic.</p> <p>12 When a Administrative Segregation offender</p> <p>13 is fed his meals, they're brought to him in his cell,</p> <p>14 given to him through a food slot.</p> <p>15 A General Population offender would be</p> <p>16 allowed to go to the chow hall, dining hall, go through a</p> <p>17 serving line, be served his meal, sit down and eat it and</p> <p>18 get up and leave.</p> <p>19 Q. Okay. So we have, at the very highest maximum</p> <p>20 security, we have Death Row?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. And you mentioned that now individuals who are</p> <p>23 found with -- and is a cell phone contraband, by the way?</p> <p>24 A. It is contraband, but it's considered dangerous</p> <p>25 contraband.</p>	

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	37		39
1	Q. Why is it considered dangerous contraband?	1	Q. And for that matter, have individuals on Death
2	A. At the Stiles facility of recent, an offender	2	Row as well?
3	actually used his cell phone to help effect an escape	3	A. Yes.
4	from Administrative Segregation.	4	Q. To a lesser extent?
5	Q. Now, are they allowed cell phones?	5	A. Yes, ma'am.
6	A. No, ma'am.	6	Q. But they've still been able to acquire it as
7	Q. How do they get the cell phones in?	7	well?
8	A. Unfortunately, staff bring them in; other	8	A. Right.
9	offenders bring them in that may be outside trustees;	9	Q. Now, you mentioned individuals had received
10	they receive a drop-off from, say, a family member or a	10	pieces of items or pieces of items that they can fashion
11	friend, and it's brought in through -- into the prison	11	into a weapon?
12	from the outside.	12	A. Yes, ma'am.
13	Q. Okay. Now, you mentioned staff sometimes bring	13	Q. Okay. Can you tell the Jury what that means and
14	them in. Is there somewhat of a black market for	14	what kind of pieces of objects they've received that they
15	contraband in prison?	15	would fashion into weapons?
16	A. There is.	16	A. Ink pens, paper clips. Sheets of
17	Q. And that doesn't mean that all staff would	17	8-and-a-half-by-11 paper can be fashioned in a way to
18	violate the rules, but there are some staff that have	18	make a spear.
19	violated the rules?	19	Q. How does that happen?
20	A. That is correct.	20	A. What they do is they roll the paper up real
21	Q. Now, you mentioned that now they're placed in	21	tight, roll several pieces of paper tightly, insert one
22	Administrative Segregation if they're caught with a	22	into the end of the other, and then they -- at the end
23	phone. Was there a recent incident that kind of	23	of that, that piece of -- that spear, they can place a
24	initiated that?	24	sharp object. I've seen Plexiglass. I've seen, like I
25	A. Yes, ma'am.	25	said, paper clips. Also if they wet the paper and let
	38		40
1	Q. What happened?	1	it dry, it becomes hardened and it makes it more of a
2	MR. HEISKELL: Excuse me, Your Honor. We	2	weapon. I've seen the bars of the cell used as a weapon
3	object to that as relevance. A phone and some recent	3	as well.
4	incident, that's not relevant to this proceeding.	4	Q. How do they get the bars of the cell and fashion
5	MS. JACK: I'll move on, Your Honor.	5	that into a weapon?
6	THE COURT: Okay.	6	A. What they do is they cut them off and they cut
7	Q. (BY MS. JACK) Are a cell phone the only type of	7	them off at an angle so that, number one, it's cut off,
8	contraband that individuals have acquired in prison?	8	it's several feet long, and it can be used as a spear,
9	A. No, ma'am.	9	and they cut the angle at one end. And I was actually
10	Q. What other kind of contraband have they	10	involved in a situation involving that.
11	acquired?	11	Q. Okay. Where are the staff when all this is
12	A. They've received -- I've seen offenders receive	12	going on? Where are the guards?
13	makeup. I've seen offenders receive weapons or pieces of	13	A. Well, guards are required to walk the run every
14	material they can fashion into weapons; drugs, of course,	14	15 minutes.
15	the cell phones, the chargers, the SIM cards.	15	Q. What does that mean?
16	Q. You mention --	16	A. That means they go onto the cell block, walk up
17	A. Money.	17	and down the row, looking in cells, checking bars,
18	Q. Money. Okay. Now, you mentioned this type of	18	looking for contraband, any other item that might be
19	contraband. Is this limited to individuals who are in	19	dangerous to the facility or the staff or the offenders.
20	general population or have inmates that are housed in	20	They walk, do security checks basically. They would come
21	Administrative Segregation also been able to acquire this	21	back to do a count. But it's basically just walking and
22	kind of contraband?	22	observing and checking and making sure everything is
23	A. Offenders in Administrative Segregation have	23	still safe over there and that someone hasn't left the
24	also been able to acquire all of that, those different	24	facility unauthorized.
25	types of contraband.	25	Q. Does that happen?

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	41		43
1	A. Yes, it does.	1	Q. Okay. Now, you mentioned Administrative
2	Q. Is that what's called an escape?	2	Segregation and how someone gets into Administrative
3	A. Yes, ma'am.	3	Segregation.
4	Q. Is that limited to General Population or have we	4	A. Yes, ma'am.
5	had attempts or, in fact, escapes from Administrative	5	Q. All right. If they engage in a disciplinary,
6	Segregation?	6	they violate one of the rules, can they end up in
7	A. There have been escapes from both areas of the	7	Administrative Segregation?
8	prison.	8	A. Yes, they could.
9	Q. Okay. So when we talk about crime or we talk	9	Q. If they are a confirmed gang member, can they
10	about contraband, it's not limited to General Population?	10	end up in Administrative Segregation?
11	A. No, ma'am, it's not.	11	A. Yes, ma'am.
12	Q. So Administrative Segregation is not as safe as	12	Q. All right. Now, when we talk about
13	the general public would like to believe?	13	Administrative Segregation, do they have the opportunity
14	A. I -- I don't think so.	14	to have visits with individuals?
15	MS. JACK: Okay. May I approach the	15	A. Yes, they do.
16	evidence for just a moment?	16	Q. Now, is there a difference between a general
17	THE COURT: Yes, you may.	17	visit and a contact visit?
18	(Pause in proceeding.)	18	A. Yes, ma'am.
19	Q. Mr. Roger (sic), I'm showing you what's been	19	Q. What's a general visit?
20	admitted into evidence as State's Exhibit 489. And a	20	A. A general visit would be on a phone, through
21	part of State's Exhibit 489, do you see that as a hard	21	Plexiglass, they could see their loved one. Some older
22	plastic, piece of a hard plastic?	22	facilities have, not a phone, but they have a screen, a
23	A. Yes, ma'am.	23	small portion of screen that they could speak to their
24	Q. Do you see the sharp corners?	24	loved one through.
25	A. Yes, ma'am, I do.	25	A contact visit would be they -- they can,
	42		44
1	Q. All right. In the hands of an inmate at T.D.C.,	1	at the beginning and end of the visit, they can
2	what can happen with this?	2	physically embrace their loved one, peck on the cheek,
3	A. Well, he could -- I don't know that he could do	3	sit down, share a Coke and a candy bar for several hours
4	fatal damage, but he could certainly use it to his	4	in a visitation area supervised by -- supervised by
5	advantage to cause some damage to a staff member or	5	correctional staff.
6	another offender.	6	Q. Okay. Now, in Administrative Segregation, which
7	Q. Okay. Could it be used as a weapon?	7	type of visit do they get to have?
8	A. I think it could be.	8	A. They would have the regular general visit
9	Q. Okay. Now, looking at State's Exhibit 490,	9	through the -- on the phone or through the mesh screen to
10	which appears to be a pen wrapped in a Scantron with	10	talk to their loved one.
11	string around it?	11	Q. They could talk to their loved one. They could
12	A. Yes, ma'am.	12	visit with their loved one. They just couldn't touch
13	Q. What can an inmate do -- what could this cause	13	their loved one?
14	in the hands of an inmate?	14	A. Correct.
15	A. An offender could use it to stab someone.	15	Q. And they could do that for a couple hours; is
16	Again, I don't think you could do it fatally, but put an	16	that right?
17	eye out. Depends on how far he's wanting to go with	17	A. Yes, ma'am.
18	that, the person he wants to stab. If he wants to kill	18	Q. They get out once a day; is that right?
19	them or just inflict a little bit of injury to make a	19	A. One hour per day.
20	statement, that happens as well.	20	Q. One hour per day. Okay. And on weekends, do
21	Q. Okay. And have you seen serious injury caused	21	they have the opportunity to have any rec. time as well?
22	with items just like these?	22	A. As far as Administrative Segregation, it's one
23	A. Not per se. I've seen similar items fashioned	23	hour per day every day of the week.
24	into -- into homemade weapons, shanks, that could -- that	24	Q. And are they entitled to the resources of the
25	have done damage, yes.	25	law library; not go to the law library, but have those

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1 books brought to them in their cell?		1 any kind of gang confirmation or violent offense that	
2 A. Yes, they can.		2 would put him into Administrative Segregation.	
3 Q. All right. Are they entitled to use the phone?		3 Q. Okay. Now, you understand that this Defendant	
4 A. Ad-Seg is not allowed to use the phone.		4 has been a confirmed or a documented member of the Texas	
5 Q. All right. Are there cameras in the Ad-Seg		5 Syndicate.	
6 cell, generally speaking?		6 A. Yes, ma'am.	
7 A. Not in the cell, no, ma'am.		7 Q. Which would put him automatically into	
8 Q. So we couldn't see what an individual is doing?		8 Administrative Segregation?	
9 A. No, ma'am.		9 A. That's correct.	
10 Q. All right. Are they allowed to have personal		10 Q. Is that right?	
11 property, some personal items?		11 A. Yes, ma'am.	
12 A. Yes, ma'am.		12 Q. Okay. Do you know which unit he would go to	
13 Q. Are they allowed to have commissary?		13 necessarily?	
14 A. Yes, ma'am.		14 A. He would go to a maximum security facility, a	
15 Q. So if an individual goes to Administrative		15 Beto, a Coffield, a unit so designed to house	
16 Segregation, they can get there a couple of different		16 administrative -- one of those 12 to 15 Administrative	
17 ways; if they're a disciplinary problem or if they're a		17 Segregation facilities.	
18 member of a -- documented member of a gang; is that		18 Q. Sure. So he could go to one of 12 to 15	
19 correct?		19 different units?	
20 A. That's correct.		20 A. Correct.	
21 Q. Now, do all gang members end up in		21 Q. We don't know which one?	
22 Administrative Segregation?		22 A. Right.	
23 A. No, ma'am.		23 Q. Would this Jury have any say in which one, if he	
24 Q. Are there particular gangs that T.D.C. views as		24 were to receive a life sentence without parole?	
25 especially violent?		25 A. They would not.	
	46		48
1 A. Yes, ma'am.		1 Q. Does a Jury ever have any say in how an	
2 Q. And what are those gangs?		2 individual is housed?	
3 A. The Texas Syndicate, the Mexican Mafia, the Raza		3 A. They do not.	
4 Unida, Barrio Azteca, Aryan Brotherhood, HPL.		4 Q. Now, understanding that initially he would go to	
5 Q. What is HPL?		5 Administrative Segregation, do individuals in	
6 A. It's a mouthful. Hermanos Pistoleros Latinos.		6 Administrative Segregation stay there forever?	
7 Q. Okay.		7 A. Not necessarily. An offender, for example, has	
8 A. Those are most of the confirmed gangs. There's		8 contraband deemed a weapon, he's written a disciplinary	
9 the Bloods, the Crips, Mandingo Warriors; they're not		9 for that weapon. We would place him in Administrative	
10 necessarily placed straight into Administrative		10 Segregation and review him by State classification every	
11 Segregation solely on their gang affiliation. They		11 six months until we decided that he's no longer a threat.	
12 would -- if they were caught recruiting and/or extorting		12 If he puts distance between him and that situation that	
13 on behalf of their gang, then we would look at strongly		13 puts him in Administrative Segregation, I, as a State	
14 putting them in the Administrative Segregation. But the		14 committee member, can release him to the General	
15 others, once confirmed as Mexican Mafia, Texas Syndicate,		15 Population.	
16 the like, defined by our Security Threat Group folks,		16 If he's a confirmed gang member, he can	
17 then those guys, once confirmed, go straight into		17 still eventually be released from Administrative	
18 Administrative Segregation.		18 Segregation, but to do so, he has to renounce his gang	
19 Q. Now, you did not mention individuals who are		19 membership, fill out the paperwork as such, and then go	
20 serving a life sentence without parole.		20 through a gang renunciation process to eventually make	
21 A. Life without parole.		21 it into -- make it into an ex-gang status so we can put	
22 Q. Do they go into Administrative Segregation		22 --then put him in General Population.	
23 automatically?		23 Q. Even if he's serving life without parole?	
24 A. No, not automatically. If -- a life without		24 A. Yes, ma'am.	
25 parole offender is a General Population offender, barring		25 Q. Individuals in Administrative Segregation, are	

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1 they put there because of the type of offense they 2 committed? 3 A. No, ma'am. 4 Q. Are they put there because of the length of 5 sentence they're serving? 6 A. No, ma'am. 7 Q. Okay. Does the type of crime for which they 8 were convicted have anything to do with necessarily how 9 they're housed or where they go? 10 A. No, ma'am. 11 Q. So Administrative Segregation does not 12 discriminate based upon the offense they've committed? 13 A. No, it doesn't. 14 Q. Okay. How long does it take to go through the 15 gang renunciation program? 16 A. It's roughly nine months. 17 Q. Okay. How long does it take for an individual, 18 or how quickly could someone serving Administrative 19 Segregation or in Administrative Segregation be in 20 General Population if they convinced the investigators or 21 the authorities that they're no longer a member of the 22 Texas Syndicate? 23 A. The quickest would be less than three years. 24 Q. Okay. So in theory, let's say Mr. Soliz goes 25 down to T.D.C., is placed in Administrative Segregation,		1 behavior is appropriate in the population, he could 2 maintain a G3 status, and that would be for the duration 3 of his stay in the prison system. 4 Q. Okay. Now, and I neglected to ask you this. 5 When someone is in the custody of Administrative 6 Segregation, regardless of the unit that they're in, this 7 Jury has heard a previous number or previous ratio of 8 guards to inmates of roughly one to a hundred and 9 forty-five. Does that generally kind of jive with the 10 numbers that you're familiar with? 11 A. I agree with that number. 12 Q. In Administrative Segregation? 13 A. Yes, ma'am. 14 Q. In General Population, whether it's G3, G4, G5, 15 do those numbers increase in terms of the number of 16 inmates to the guards? 17 A. Yes, they do. For example, when I was a warden 18 at the facilities I was a warden, we had dormitories. We 19 had four living areas, for example, A, B, C and D. Each 20 of those areas held 50 offenders. We had a control 21 officer. You've always got to have a control officer. 22 And then one of -- one officer was considered a roving 23 staff member, counting, taking care of situations at 24 the -- in the housing area. On a good day, we would have 25 a control officer plus two officers monitoring those 200	
	50		52
1 and immediately renounces his gang membership, how 2 quickly could he be in General Population if he convinces 3 the investigators and authorities at T.D.C.J. that he is 4 no longer an active member of the Texas Syndicate? 5 A. Again, less than three years. 6 Q. Okay. Now, when he goes into general -- if he 7 were to go into General Population, are there multiple 8 levels for General Population? 9 A. Yes, ma'am. 10 Q. And what are those different levels? 11 A. Those different levels are G1, general -- 12 G stands for General Population. G1, G2, G3, G4, and G5. 13 Q. Okay. Now, General Population 1 and 2, I take 14 it, are minimum security? 15 A. Correct. 16 Q. And I take it that General Population 4 and 5 17 would be trending towards the more medium security? 18 A. Right. 19 Q. All right. An individual serving a life 20 sentence without parole, I take it, coming out of 21 Administrative Segregation could work his way down 22 how far in terms of General Population and the 23 security necessary to guard? 24 A. That -- a life without parole offender would be 25 allowed custodies of G3, G4 and G5. If he -- his	1 offenders. 2 Q. All right. So one, maybe two, possibly three 3 guards for in the neighborhood of 200 offenders in 4 General Population? 5 A. Yes, ma'am. 6 Q. Okay. Now, in General Population, if someone is 7 serving a life sentence without parole, do they wear a 8 particular uniform that says L.W.O.P.? 9 A. They do not. 10 Q. Do the guards know what the individuals are 11 serving? 12 A. Not necessarily. 13 Q. Do the guards know what the facts of the 14 offenses are? 15 A. They probably do not unless they watch TV or 16 they've read the file. 17 Q. Or they get on the Internet? 18 A. Ma'am? 19 Q. Or they get on the Internet? 20 A. Or they get on the -- yes, ma'am. 21 Q. Okay. Now, how about the other inmates, do they 22 know what an -- well, setting aside somebody bragging 23 about what they've committed, do the other inmates know 24 what the other inmates are serving or what they've 25 committed or what they've been convicted of?		

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1 A. No, ma'am, they -- they -- they wouldn't.
 2 Q. Okay. Is it possible for someone serving a life
 3 sentence without parole for capital murder to be in the
 4 same cell, in the same dorm with someone who is simply
 5 serving a sentence for a high theft?
 6 A. Yes.
 7 Q. A DWI, habitual DWI?
 8 A. That's possible, yes.
 9 Q. Someone that is serving a nonviolent sentence?
 10 A. Correct.
 11 Q. Okay. So the guards don't know, the other
 12 inmates don't know what that individual is serving or
 13 been convicted of?
 14 A. No, they don't.
 15 Q. Unless they talk about it?
 16 A. Correct.
 17 Q. Okay. Now, G5, G4, and G3, are they allowed --
 18 are those inmates allowed to work?
 19 A. Yes.
 20 Q. What are the areas that they can work in?
 21 A. G3 offender could work just about any job in the
 22 facility except one that would allow him free and
 23 frequent access to the facility or one that would allow
 24 him close proximity to the outer perimeter. Other than
 25 that, he can work just about any type of job.

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1 on horseback, armed guard, working that facility's
 2 agricultural areas or chopping grass or picking peas,
 3 corn, whatever.
 4 Q. So if Mr. Soliz is given a life sentence without
 5 parole, renounces his gang membership, and comes out of
 6 Administrative Segregation inside of three years or
 7 around three years, he could be working outside of the
 8 perimeter of T.D.C.J.?
 9 A. Yes.
 10 Q. Under a guard, under a guard who is armed; is
 11 that correct?
 12 A. Yes, ma'am.
 13 Q. Along with his fellow inmates?
 14 A. Correct.
 15 Q. Be given tools?
 16 A. Yes.
 17 Q. Tools that could be used as weapons?
 18 A. Yes.
 19 Q. And have been in the past?
 20 A. Yes.
 21 Q. Let me just tell you as a practical -- let me
 22 ask you as a practical matter, if those squads decide to
 23 rush an officer, what happens?
 24 A. Well, the officer, most officers, except the
 25 high rider of the field squad, would be carrying a

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1 G4 and G5 are pretty much disciplinary-type
 2 custodies. Those offenders primarily work outside the
 3 security perimeter in a -- what's called a hoe squad
 4 where you may have guys picking peas, hoeing the grass,
 5 under the supervision of a -- of an armed correctional
 6 officer.
 7 Q. Okay. So G3, G4, G5, the highest security, at
 8 least for General Population, can work outside of the
 9 security perimeter?
 10 A. G2 through G5 can work outside the security
 11 perimeter under armed guard.
 12 Q. Is this outside of the fence of T.D.C.?
 13 A. It is outside the fence of T.D.C. of that unit.
 14 Q. Okay. Now, there does have to be a guard out
 15 there?
 16 A. Yes.
 17 Q. And that guard has to be armed; is that correct?
 18 A. Correct.
 19 Q. How many offenders, generally speaking, can go
 20 outside the fence of T.D.C.J. and work?
 21 A. Per one guard, it could be 15 to 25 offenders
 22 being supervised at the time. And, of course, there
 23 would be several squads out. And if you've ever been
 24 by one of -- a prison facility, you may see offenders,
 25 several squads of offenders out with several officers

1 six-shooter, a pistol. They would be able to shoot that
 2 offender or ride off on their horse from that offender.
 3 But once those six shells are expended, then catastrophe
 4 would probably occur.
 5 Q. And has that happened?
 6 A. That has happened.
 7 Q. Did we have a high rider a few years ago -- was
 8 a high rider killed by a group of individuals outside of
 9 the security perimeter at T.D.C.J.?
 10 A. Yes, they were.
 11 Q. I want to talk about the training that guards
 12 have whether it's General Population or whether it's
 13 Administrative Segregation. You're not saying the guards
 14 don't do everything they can, are you?
 15 A. No, ma'am, I'm not saying that.
 16 Q. Where does T.D.C.J. recruit from?
 17 A. They recruit from military bases. They recruit
 18 from high schools, they -- colleges, universities,
 19 wherever we can find able-bodied staff.
 20 Q. Okay. So you may have an 18-year-old guard; is
 21 that right?
 22 A. That's correct.
 23 Q. What kind of training does that 18-year-old
 24 guard get?
 25 A. Other than the six-week training school that

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1 they go through either in Huntsville or Gatesville,
2 that's pretty much it. And it's considered an
3 orientation more so, and they get two weeks at the
4 facility, two weeks to a month of on-the-job training.

5 Q. Do females get anymore training than that?

6 A. No, ma'am.

7 Q. When you start at T.D.C.J, do you start in
8 General Population as a guard or do you start -- can you
9 start potentially in Administrative Segregation?

10 A. You could start either place, wherever the need
11 is.

12 Q. So you could have an 18-year-old female guard
13 guarding a hundred and forty-five Administrative
14 Segregation inmates?

15 A. Yes, ma'am.

16 Q. With six weeks of training?

17 A. Yes, ma'am.

18 Q. And, by the way, the guards in Administrative
19 Segregation, what do they wear?

20 A. They wear gray suits, their uniforms. They
21 also wear -- now they've got knife thrust vests is what
22 they call them that most of them wear those, depending
23 on agency budgets. They have -- usually have a
24 keep-on-person can of mace and riot batons in their --
25 on their person when they're working the wing.

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1 A. I'm sorry. Death Row. Thing about Death Row
2 is it's managed just like Administrative Segregation.
3 Q. Same kind of guards could be on Death Row?
4 A. Yes.
5 Q. Do we still have crime on Death Row?
6 A. Yes, we do.
7 Q. And you're not here disparaging the guards or
8 the employees of T.D.C.J., are you?
9 A. Not at all.
10 Q. You do everything you can?
11 A. Yes, we do.
12 Q. Underpaid and overworked?
13 A. I think so.
14 Q. Are there signs around the various units of
15 T.D.C.J. discussing the possibility of hostages being
16 taken?
17 A. Yes, at the front door.
18 Q. Why is that?
19 A. Because if a hostage is taken, and, for example,
20 if the Warden has a knife to his throat with -- by an
21 offender, and that last gate is the -- going to -- the
22 officer in that control area is not going to punch the
23 button to open that gate to let that offender and that
24 Warden out, even if that offender cuts the throat of that
25 Warden, because it's -- we don't want that person in the

1 Q. What is a thrust vest?
2 A. Thrust vest is simply like a bullet-proof vest,
3 only these are -- handle a knife, stopping a knife from
4 penetrating the vital organs of the body.
5 Q. And are the thrust vests or uniforms worn by
6 guards in Administrative Segregation a relatively new
7 change or policy?
8 A. I worked Administrative Segregation '85 through
9 '87, and we did not have those.
10 Q. Okay.
11 A. Depending on -- it's a relative term. As far as
12 I'm concerned, it's relatively new, but it's been --
13 they've been around for several years.
14 Q. So even with all the changes and all the
15 improvements that T.D.C.J. has, it was necessary for the
16 guards in Administrative Segregation to basically wear
17 body armor; is that right?
18 A. Yes.
19 Q. What is the most secure area that we have at
20 T.D.C.J.?
21 A. Maximum security Administrative Segregation.
22 Q. What is even more secure than that?
23 A. More secure than that would be -- well, we have
24 protective custody.
25 Q. Okay. Is Death Row the most --

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1 public. And if public safety is violated, then we've
2 just failed in our mission.

3 Q. So even with all the security that we have, it's
4 still necessary to warn visitors that hostages may be
5 taken?

6 A. Absolutely.

7 Q. And that they enter at their own risk?

8 A. Correct.

9 MS. JACK: May I approach this witness, Your
10 Honor?

11 THE COURT: Yes, ma'am.

12 Q. Mr. Rogers, I'm showing you what's been marked
13 for identification purposes as State's Exhibits 493
14 through 496. Are each of these pictures examples of the
15 signs that are found at the various units around
16 T.D.C.J.?

17 A. Yes, ma'am, they are.

18 Q. Are they fair and accurate portrayals of those
19 signs found around T.D.C.J.?

20 A. Absolutely.

21 MS. JACK: Your Honor, at this time, State
22 would offer into evidence State's Exhibits 493 through
23 496.

24 MR. HEISKELL: No objection.

25 THE COURT: Admitted.

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1	(State's Exhibit Nos. 493 - 496 admitted.)	1 the -- of the state.
2	MS. JACK: May I publish, Your Honor?	2 Q. Why is it necessary to have a sign like that?
3	THE COURT: Yes, ma'am.	3 A. Because they could be -- those hitchhikers could
4	Q. (BY MS. JACK) Mr. Rogers, is this an exhibit,	4 be escaping offenders, and we don't want somebody to get
5	State's Exhibit 493, of one of the signs found around the	5 hurt that way or help aid in someone's escape from a
6	units of T.D.C.J.?	6 facility.
7	A. Yes, it is.	7 MS. JACK: Okay. May I have a moment, Your
8	Q. It says "Will not permit inmates or hostages to	8 Honor?
9	escape from custody or otherwise interfere with orderly	9 I believe that's all I have. I'll pass this
10	institutional operations. Hostages will not be	10 witness for cross-examination, Your Honor.
11	recognized for bargaining purposes. All inmates,	11 CROSS-EXAMINATION
12	visitors, staff and volunteers will be informed of this	12 BY MR. HEISKELL:
13	regulation." And it's also in Spanish; is that true?	13 Q. Mr. Rogers?
14	A. That's true, yes, ma'am.	14 A. Yes, sir.
15	Q. And the hostages, whether we're talking about a	15 Q. My name is Mike Heiskell. How are you?
16	Governor or whether we're talking about a mother and her	16 A. I'm fine. How are you, sir?
17	children, T.D.C. cannot negotiate for those hostages?	17 Q. I'm fine. Thank you. I have some questions for
18	A. No, we cannot.	18 you. If you don't understand me when I ask you those,
19	Q. And is this another example of one of the signs	19 don't hesitate to stop me and I'll start over.
20	found around T.D.C.J.?	20 A. Yes, sir.
21	A. Yes, it is.	21 Q. Now, you've testified before in capital murder
22	Q. And these are all from different units, are they	22 cases, correct?
23	not, Mr. Rogers?	23 A. Yes, sir, I have.
24	A. It looks to be. And I see those signs every	24 Q. And your -- purpose of your testimony is to
25	time I go visit a facility.	25 essentially let the Jury know that T.D.C. is not a safe
	62	64
1	Q. And so the Jury understands, where are those	1 place so that a death sentence can be imposed; isn't that
2	signs generally in terms of the facility?	2 true?
3	A. Usually as you're driving into the facility,	3 A. Pretty much, yes, sir.
4	you'll probably pass a marker that says, for example,	4 Q. Okay. And so there's an agenda on your part to
5	the Michael Unit. You proceed further down the road,	5 say that. Okay. You know, you've worked in
6	to the right you'll see one of those signs that say	6 classifications for a number of years, and you've worked
7	"hostages not taken; concealed weapons not allowed".	7 at T.D.C. for a number of years. And you know, for
8	Then you get to the entryway, and you'll see right	8 instance, that when -- these guards and administrators
9	outside on the front door and on the inside gate as	9 and folks there try to do the best they can to keep it
10	if you were exiting the facility, you'll see the	10 safe and secure; isn't that true?
11	hostage warnings posted there.	11 A. Yes, sir; however, I -- may I disagree with the
12	Q. Mr. Rogers, can you see this sign?	12 fact of what you said about me having an agenda? I don't
13	A. Yes, ma'am.	13 necessarily have an agenda. I'm just trying to tell you
14	Q. And it says, "Do not pick up hitchhikers"; is	14 what I know. That's all.
15	that correct?	15 Q. Okay. Well, let's get to what you know. And
16	A. That is correct.	16 you know that state law requires T.D.C.J. put together a
17	Q. Where is this sign?	17 classification plan for inmates when they come in?
18	A. It's usually on a road -- well, every time I go	18 A. Yes, sir.
19	to the Coffield, Beto, Michael facilities for	19 Q. And, in fact, part of that classification plan
20	Administrative Segregation hearings, those signs are down	20 is instituted by virtue of T.D.C. interviewing inmates
21	the main road. If you've never been to a prison but have	21 who come in through the Diagnostic Unit; is that correct?
22	been within a few miles of a prison, for example, Highway	22 A. That is correct, sir.
23	287 in Palestine area, you're going to see the signs that	23 Q. And they look at the prior criminal history?
24	say "Do not pick up hitchhikers". And these signs are	24 A. Yes.
25	several miles from the facility on main thoroughfares of	25 Q. They look at prior classification in T.D.C. if

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1 they've been in T.D.C. before, correct?
 2 A. Correct.
 3 Q. They look at prior violent offenses, as the
 4 Prosecutor stated, such as capital murder, correct?
 5 A. Correct.
 6 Q. You look at medical needs for that particular
 7 inmate?
 8 A. Yes, we do.
 9 Q. There's a mental health evaluation to see what
 10 type of inmate you're dealing with mentally speaking;
 11 isn't that true?
 12 A. That's true.
 13 Q. And all of these factors go into play in trying
 14 to classify and place that inmate in a particular unit so
 15 that not only will the guards be safe but other inmates
 16 be safe, isn't that true?
 17 A. That is true.
 18 Q. And that's not thrown away and disregarded or
 19 trashed or shredded, but that's something that stays with
 20 that inmate throughout; isn't that true?
 21 A. That is true.
 22 Q. Now, with regard -- let me ask you this. Those
 23 signs we just saw about "Do not enter" or "Enter at your
 24 own risk", you see that at county jails as well, don't
 25 you?

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1 correct?
 2 A. That's correct.
 3 Q. And they have -- regarding that, we're talking
 4 about the same type of cells, the pods and so forth
 5 exists at Death Row also exists for Administrative
 6 Segregation?
 7 A. Yes, sir.
 8 MR. HEISKELL: Let me approach, if I may,
 9 Judge. I have a number of exhibits.
 10 MS. JACK: May I approach as well so I can
 11 see?
 12 (Pause in proceeding.)
 13 Q. (BY MR. HEISKELL) Mr. Rogers, I'm, first of
 14 all, going to hand you what's been marked for
 15 identification purposes as Defense Exhibit No. 28.
 16 A. Okay.
 17 Q. And ask you to review that, see if you can
 18 identify that, please.
 19 A. Yes, sir. That's -- this is our policy
 20 regarding classification procedures as relates to
 21 classification committees.
 22 Q. Okay. I'm also now going to hand you what's
 23 been marked for identification purposes as Defense
 24 Exhibit 29 and ask if you can identify that, please.
 25 A. This is the Administrative Segregation plan that

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1 A. I -- I don't -- I haven't been to a county jail
 2 in -- I don't think I've ever been to a county jail per
 3 se, sir.
 4 Q. All right. Well, never being -- well, granted,
 5 I've been to a lot of county jails.
 6 A. Yes, sir.
 7 Q. I've seen similar. You don't disagree with that,
 8 do you?
 9 A. I wouldn't disagree with you at all, no, sir.
 10 Q. Whether it's Johnson County jail or Tarrant
 11 County jail.
 12 A. Correct.
 13 Q. Let me ask you this. How many 18-year-old
 14 female guards do y'all have working on that
 15 Administrative Segregation?
 16 A. I don't know that, sir.
 17 Q. Do you have stats you can give this Jury?
 18 A. I don't have personnel stats. I could quickly
 19 acquire them, but I don't have them off the top of my
 20 head.
 21 Q. Okay. 12 to 15 units you said have
 22 Administrative Segregation?
 23 A. Yes, sir.
 24 Q. And that Administrative Segregation is managed
 25 the same as is managed on Death Row, the Polunsky Unit,

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1 we use that tells us all the particulars of how to -- how
 2 we're going to manage Administrative Segregation on a
 3 unit.
 4 Q. And Defense Exhibit No. 30, please.
 5 A. This is an Administrative Segregation reference
 6 chart. It tells the classification boundaries and the
 7 conditions of those boundaries as to how we're going to
 8 treat a individual in Administrative Segregation.
 9 Q. And, finally, Defense Exhibit No. 31.
 10 A. Again, this is similar to a Administrative
 11 Segregation plan. It's the actual classification
 12 procedure as to how often we review offenders, their
 13 different levels. The units have to review an offender
 14 ever so often for leveling, level 1, 2 and 3, which is
 15 keyed to how they're acting. And that's what this one
 16 involves, sir.
 17 Q. And all of these exhibits, if you will look at
 18 the effective dates, these are the most recent, updated
 19 Administrative Segregation plan and reference charts and
 20 classification procedures, are they not?
 21 A. Yes, sir, they are.
 22 Q. And these are some of the procedures and
 23 classification issues that you deal with on a day-to-day
 24 basis?
 25 A. Yes, sir.

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1 MR. HEISKELL: Your Honor, at this time we
 2 would offer 28 through 31.

3 MS. JACK: No objection, Judge.

4 THE COURT: Admitted.

5 (Defendant's Exhibit Nos. 28 - 31 admitted.)

6 Q. (BY MR. HEISKELL) Mr. Rogers, I'm going to use
 7 this overhead, if I can, to go through some of these
 8 documents.

9 A. Yes, sir.

10 THE COURT: Let's take a 15-minute recess
 11 and then we'll come back.

12 (Recess taken from 10:30 to 10:48 a.m.)

13 (Jury not present.)

14 THE COURT: You may be seated. Is the State
 15 ready to proceed? State ready?

16 MS. JACK: We're ready, Judge.

17 THE COURT: Defense ready?

18 MR. HEISKELL: Yes, Your Honor.

19 THE COURT: Defendant is present. Jury
 20 ready?

21 THE BAILIFF: Yes, sir.

22 THE COURT: Bring them in, please.

23 (Jury present.)

24 THE COURT: You may be seated.

25 Yes, sir.

1 requests to state classification because he's got an
 2 issue, a housing change. Lots of different reasons the
 3 Ad-Seg committee would talk to a fellow.

4 Q. Okay. And we see on that second paragraph here
 5 regarding classification office may refer offenders from
 6 the U.C.C. to the A.S.C., and that's that unit
 7 classification issue, due to assaultive behavior or
 8 Security Threat Group confirmation. Do you see that,
 9 sir?

10 A. Yes, sir. I'm losing something on the right
 11 side of the page there.

12 Q. Okay. I'm sorry. Let me --

13 A. Yes, sir.

14 Q. Okay. Now, I want to now take you to what is
 15 referenced in the attachment to this document, State's --
 16 Defense Exhibit 28, what is called the General Population
 17 Level. And I've highlighted a certain area, sir, on this
 18 particular exhibit. And if you could see that, it
 19 references G3 custody, does it not?

20 A. Yes, sir, it does.

21 Q. And, in fact, it says G3 custody shall be
 22 assigned to primarily SAT 3, SAT 4 or Line Class 1,
 23 time-earning status offenders?

24 A. Yes, sir.

25 Q. And custody should only be assigned to offenders

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1 MR. HEISKELL: Thank you, Your Honor.

2 Q. (BY MR. HEISKELL) Mr. Rogers, I'm showing you
 3 now Defense Exhibit No. 28, which is the classification
 4 of procedure -- classification procedure -- if I can zoom
 5 this out -- that you previously identified; is that
 6 correct, sir?

7 A. Yes, sir, that's correct.

8 Q. Can you see that on your monitor in front of
 9 you?

10 A. Yes, sir, I can.

11 Q. Okay. And this is the first page. We see this
 12 is dated February of 2010; is that correct, sir?

13 A. That's correct.

14 Q. All right. I now want to take you to a section
 15 entitled The Administrative Segregation Committee. And
 16 is that a committee that you were a part of?

17 A. No, sir, it's not, not the Ad-Seg committee.

18 That's a unit-based committee.

19 Q. And tell us about this unit-based committee of
 20 Administrative Segregation.

21 A. They -- when an offender is initially placed in
 22 Ad-Seg, he's required to be reviewed by the Ad-Seg
 23 committee for -- to make sure his placement is accurate.
 24 He could be reviewed by this committee for promotion in
 25 time-earning status, promotion in level, transfer

1 who have one or more of the following characteristics.

2 You see that?

3 A. Yes, sir, I do.

4 Q. And that first one highlighted is "no
 5 requirement for a more restrictive custody". You see
 6 that, sir?

7 A. Yes, sir, I do.

8 Q. And a requirement for a more restrictive custody
 9 could be, in fact, be that Security Threat Group
 10 designation; is that true?

11 A. The custody based on the Security Threat Group
 12 that would put him into Ad-Seg, yes, sir.

13 Q. And you see here at the bottom, and this
 14 references offenders convicted of capital murder and
 15 sentenced to life without parole, highlighted in that
 16 bullet point 8. You see that, sir?

17 A. Yes, sir, I do.

18 Q. Okay. Now, when we look at that, and then we
 19 move to the next document, sir, which is Defense Exhibit
 20 No. 29 which is entitled Administrative Segregation Plan,
 21 do you see that, sir?

22 A. Yes, sir, I do.

23 Q. And it may not be --

24 A. It's a little blurry.

25 Q. Yeah, I'm trying to get that, if I can. Okay.

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1 And this document, sir, for purposes of showing us here
 2 is dated March -- it's brand-spanking new, March of 2012;
 3 is that right?

4 A. Yes, sir, it is.

5 Q. We go to the actual page 1 of this document,
 6 sir, we have the definition of Administrative
 7 Segregation?

8 A. Yes, sir.

9 Q. Can you see that clearly and can you read it
 10 briefly, that first paragraph, sir?

11 A. I can't -- the left and right margins are a
 12 little out, so.

13 Q. Let me try to correct that. Is that helpful?

14 A. It's blurred, but I'll give it a try.

15 Administrative Segregation is a nonpunitive, maximum
 16 custody status involving the separation of an offender
 17 from General Population for the purpose of maintaining
 18 safety, security and order among General Population
 19 offenders and correctional officers within the prison and
 20 the public. For the purpose of this plan, ad --
 21 Administration Segregation shall consist of the following
 22 four categories.

23 Q. And it lists the four categories below that; is
 24 that correct, sir?

25 A. That's correct.

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1 Q. Was there from approximately January of 2007
 2 until approximately 2010; isn't that true?

3 A. I believe so.

4 Q. And during that entire time, he was in
 5 Administrative Segregation, was he not?

6 A. I think a small time he was in the population,
 7 but the majority of the time was in Ad-Seg.

8 Q. And that was after he was confirmed as a member
 9 of that gang that he referenced; is that true?

10 A. That is true.

11 Q. And he stayed in that Administrative Segregation
 12 for at least three or so years; isn't that true?

13 A. I didn't check the time frame, but I know he
 14 paroled out in that status. He was in Ad-Seg.

15 Q. And he -- he paroled out in that status, and
 16 previous to that, he had been locked up in
 17 Administrative-Seg for about three years; isn't that
 18 true?

19 A. Yes, sir.

20 Q. And that's part of the classification procedure
 21 when you look at some things like that, when you find a
 22 person has been in the prison system before, has been in
 23 Administrative-Seg, has been in a Security Threat Group,
 24 that plays into how you would place him when he comes
 25 back to prison; isn't that true?

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1 Q. And including the number one category, security

2 detention?

3 A. Yes, sir, that's correct.

4 Q. And then we have under that, prehearing
 5 detention, and under that, protective custody, and
 6 finally, temporary detention; is that correct, sir?

7 A. That is correct.

8 Q. And let me move to the definition at the bottom
 9 of this document referencing security detention. You see
 10 that, sir?

11 A. Yes, I do.

12 Q. And what I've highlighted here, security
 13 detention is used for an offender who is a, and at the
 14 very bottom, you see that, confirmed member of a Security
 15 Threat Group?

16 A. Yes, sir.

17 Q. And you've told this Jury that you are aware
 18 that Mark Anthony Soliz is a confirmed member of a
 19 Security Threat Group, and that is Texas Syndicate?

20 A. Yes, sir, that's what was on my computer when I
 21 checked him out the other day.

22 Q. And when you checked him out the other day, you
 23 also saw that he'd been in the Texas Prison System
 24 before, had he not?

25 A. Yes, sir.

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1 A. That is true.

2 Q. And during that entire time he was in
 3 Administrative-Seg, he stayed there and there was no
 4 movement from -- of him from Administrative-Seg back to
 5 General Population?

6 A. No, sir, I didn't see a move back.

7 Q. I'm now going to reference, Mr. Rogers, Defense
 8 Exhibit No. 30. Can you see that, sir?

9 A. Yes, sir.

10 Q. And this particular talks that -- references
 11 the reference chart that you talked about when I showed
 12 you this document earlier. Do you recall that, sir?

13 A. Yes, sir, I do.

14 Q. Are you -- can you read that chart from where
 15 you're seated?

16 A. Offenders in security detention shall be subject
 17 to the following classification boundaries.

18 Q. Okay. And let me -- let me take them one at
 19 a time, if I may, so we can discuss them. When we look
 20 at A., it says ineligible for promotion. Trying to
 21 tighten it up a little bit. Okay. Can you see that,
 22 Mr. Rogers?

23 A. Yes, sir.

24 Q. Ineligible, excuse me, for promotion of time and
 25 class SAT 4. Explain to the Jury what that means.

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1 A. SAT 4 is -- that means State Approved Trustee
 2 4. That's his time-earning status, his time-earning
 3 paycheck, how much good time he would get. The life
 4 without parole, it really wouldn't factor in.

5 Q. So he gets no time. He's in there for the rest
 6 of his life?

7 A. Yes, sir.

8 Q. The B. part says ineligible for contact visits,
 9 however, may have one noncontact visit each week?

10 A. Yes, sir.

11 Q. Now, a contact visit is where a inmate can
 12 actually touch or hold or feel a visitor; is that
 13 correct?

14 A. Yes.

15 Q. And that visitor, and I think you referenced
 16 when the Prosecutor was asking you questions about those
 17 situations where visitors can perhaps sneak contraband in
 18 somehow, I guess, to inmates in the prison; is that
 19 right?

20 A. They can do it several ways, and one of them is
 21 contact visitation.

22 Q. However, here, the person is not eligible to have
 23 any type of contact visit?

24 A. Correct.

25 Q. For the rest of his or her life?

1 Q. Ineligible for a job assignment or participation
 2 in educational programs. Those job assignments we talked
 3 about, perhaps within the prison facility, whether it's
 4 outside or inside, nevertheless, that person cannot have
 5 a job under this particular boundary; is that correct?

6 A. Correct, not being in Administrative
 7 Segregation.

8 Q. Nor have any type of educational program to
 9 attend to?

10 A. No, sir.

11 Q. Is that right?

12 A. Correct.

13 Q. Requires constant armed supervision outside the
 14 security perimeter, escort to and from activities outside
 15 the offender's assigned cell. In other words, when they
 16 go for that one hour for perhaps recreation or be in a
 17 rec area, it's got to have that type of security around
 18 them; is that right?

19 A. That is correct.

20 Q. That last part, must be housed in a single cell
 21 specifically designed for housing security detention
 22 offenders. In other words, they're not grouped with
 23 others; they're in that single cell?

24 A. That's correct.

25 Q. Okay. But the other conditions here for the

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1 A. Correct.

2 Q. However, they may have a one noncontact visit
 3 each week, I guess depends upon whatever boundaries that
 4 are for that particular inmate; is that correct?

5 A. I'm sorry, say that again, please. I'm sorry.

6 Q. However, may have one noncontact visit each
 7 week?

8 A. Yes, sir.

9 Q. All right. That person, of course, would be
 10 through that Plexiglass, I think you told us about; you
 11 can get on the phone and see the person on the other side
 12 of the glass?

13 A. Yes, sir, that's it.

14 Q. Okay. I'm sorry, I moved that. Ineligible for
 15 an emergency absence. Now, the emergency absences can
 16 be when a inmate's mother or father perhaps has died or
 17 some relative, you can go for a emergency visit or
 18 absence to that funeral service?

19 A. To the funeral service or to the bedside at,
 20 say, a hospice.

21 Q. To watch their loved one die or?

22 A. To at least visit for that, for a few hours.

23 Q. But a person in this status cannot do that, can
 24 they?

25 A. No, they cannot.

1 Level 1 Ad-Seg talks about out-of-cell recreation
 2 scheduled at warden's discretion, one hour seven days a
 3 week or, at discretion, two hours five days a week; is
 4 that right?

5 A. That's correct.

6 Q. Okay. And then we have meals, which is a
 7 regular food tray that those are provided through the
 8 food slot or a bean chute?

9 A. Yes, sir, he gets the same food that's served
 10 to the regular -- the General Population.

11 Q. Commissary. If someone can provide monies, then
 12 that's \$70 every two weeks and allowed special purchase
 13 items; is that right?

14 A. That is correct.

15 Q. Property. Basic list items plus additional
 16 items general available -- generally, excuse me,
 17 available to G.P., which is General Population?

18 A. Yes, sir.

19 Q. And what are the basic list items, if you recall
 20 or do you know?

21 A. He could have a radio, a fan, a Bible, books.
 22 I'm sure there's other items. Well, they have to have a
 23 razor. Lots of different miscellaneous items, pen,
 24 pencil, paper, their letters, their legal mail, items
 25 like that.

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1 Q. Okay. We have to provide a opportunity to
 2 shower seven days a week. Is there a shower in that
 3 cell?

4 A. Most facilities have a shower area, not
 5 necessarily in the cell, but they're escorted to a
 6 shower.

7 Q. And they have to be escorted by armed escorts?

8 A. No, the escorts, the correctional staff in
 9 Ad-Seg; they have a riot baton and keep-on-person mace.

10 Q. Okay. All right. F. says: May have access to
 11 in-cell programs that are consistent with security
 12 requirements. Excuse me. Allow materials available
 13 through the commissary and in-cell correspondence course
 14 materials, if approved. Those are some of the things we
 15 mentioned earlier; is that correct, sir?

16 A. Yes, sir.

17 Q. Okay. And access to counselors, chaplains and
 18 medical care?

19 A. Yes, sir.

20 Q. And the last one, eligible -- eligible for
 21 in-cell arts and crafts, piddling.

22 A. I don't think that's happening.

23 Q. Okay. Why do you say that?

24 A. Well, because arts and -- well, they can draw
 25 and have colored pencils, but as far as when I think

1 A. Yes, sir.

2 Q. And tell us again what is S.C.C.

3 A. That stands for State Classification Committee.
 4 There's 11 of us in the state that have certain authority
 5 to release these guys from Administrative Segregation as
 6 well as being required to review them yearly, to see if
 7 he's doing okay, if there's anything we can help him
 8 with. He may need a referral to the medical department
 9 or the psychological department or refer him to Security
 10 Threat Group because he wants to renounce his gang
 11 affiliation.

12 Q. And that would have taken place -- that takes
 13 place for every Ad-Seg inmate who is a member of that
 14 group, that annual review?

15 A. Yes, sir.

16 Q. And then a determination is made at some point
 17 by the inmate if he or she wants to renounce that
 18 particular gang, and then a process is started for that;
 19 is that right?

20 A. Yes, sir.

21 Q. And that process can take, I think as you
 22 stated, several weeks or months; is that correct, sir?

23 A. Yes, sir, nine months.

24 Q. And that process is in which a person would
 25 renounce, that is known within the administration of

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1 piddling shop, that's the place -- you know, a lot of
 2 law enforcement agencies in Texas have offenders that
 3 do their belt buckles and their gun holsters, and that
 4 would require some sharp objects and, you know, stuff
 5 that's -- wouldn't be allowed in a cell. But when
 6 they're speaking of in-cell arts and craft, it would be
 7 something of the nature of pastels to draw pictures and
 8 stuff like that.

9 Q. Oh, okay.

10 A. Something that wouldn't be a threat to security.

11 Q. Okay. So that's always a consideration; you
 12 look at what could be considered a potential threat by
 13 looking at what objects they may have access to? Is that
 14 correct?

15 A. Yes, sir. And everything we're talking about is
 16 subject to the discretion of the unit warden.

17 Q. Okay. Thank you. I'm now going to show you,
 18 Mr. Rogers, Defense Exhibit No. 31, which is the Unit
 19 Classification Procedure. You see that, sir?

20 A. Yes, sir.

21 Q. And that's dated October of 2009; is that right?

22 A. Yes, sir, it is.

23 Q. And when we look at -- I think you referenced
 24 this earlier in your testimony, and that is the annual
 25 Security Threat Group review by S.C.C.

1 T.D.C. as well as obviously to perhaps even other inmates
 2 who are gang members?

3 A. Yes, it is. Let me clarify something just a
 4 little bit. An offender that says "I want to renounce
 5 my gang affiliation", first of all, at a minimum of two
 6 years, the -- once he makes that request, the Security
 7 Threat Group officer at that facility is going to watch
 8 his mail. They're going to watch him on the rec yard,
 9 see if he's affiliating or associating with any known
 10 gang members, if he's got any property or tattoos or
 11 anything new that they think he's not sincere about
 12 his disassociation. So it's a minimum of two years
 13 they're going to watch him.

14 And let's say after that two years the
 15 Security Threat Group officer says this guy, he's --
 16 we're going to ex him, he's not affiliated anymore,
 17 he's sincere, then he would be sent to what's called
 18 the GRAD program, Gang Renunciation And Disassociation.
 19 Excuse me. It's a process, and that's about nine months
 20 long.

21 Q. Okay. So the two-year period, you add another
 22 nine months to that for that GRAD program?

23 A. Yes, sir.

24 Q. Okay. So for two years he's watched and
 25 observed. Now, is he --

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1	A. That's at a minimum, sir.	1	A. It's the same thing except the door is painted
2	Q. That's at a minimum. So it could be longer?	2	blue instead of white.
3	A. It could be longer, and it could come back that	3	Q. Okay. And that's showing it from --
4	they say, no, we think he is still affiliated.	4	A. From the door being open.
5	Q. And one thing, I guess, persons in that capacity	5	Q. Door being open.
6	would look out for is whether they are being somehow	6	A. Yes, sir.
7	fooled by this inmate or the inmate is being deceptive or	7	Q. Okay. In fact, it has a cell number on that; is
8	manipulative, and they can detect that and say, hey, you	8	that right?
9	know, this guy is really not sincere?	9	A. Yes, sir.
10	A. Yes, sir.	10	Q. Defense Exhibit No. 36.
11	Q. Okay. And those officers who do that are	11	A. That is his commode, his wash -- his sink, and
12	trained in looking out for those type of things, are they	12	he gets a drink from there.
13	not?	13	Q. Okay. And let's go to Defense Exhibit 37. Tell
14	A. Yes, they are.	14	us what that is.
15	Q. They have been experienced in looking out for	15	A. This would be a riot helmet. It's the helmet
16	those persons who may, in fact, try to be deceptive,	16	the officers wear should they have to force-move an
17	manipulative or what have you, in order to show a	17	offender or if there is a riot on the facility anywhere
18	sincerity or lack thereof in making that decision?	18	else, they would wear this riot helmet along with any
19	A. Yes, sir.	19	other protective equipment.
20	Q. And we know that Mark Soliz, as you stated, was	20	Q. And Defense Exhibit No. 38.
21	in Ad-Seg under that Security Threat Group for at least	21	A. And these are -- I see leg irons. I see riot
22	three years from '07 till '10?	22	batons. I see plastic cuffs. And I see gas masks.
23	A. Yes, sir.	23	Q. Okay. And the gas masks are for purposes of
24	MR. HEISKELL: If I may approach again, Your	24	what, sir?
25	Honor?	25	A. In case offenders become violent, tearing up
	86		88
1	THE COURT: Yes, sir.	1	property, harming, any threat to the security
2	Q. I'm going to show you now, Mr. Rogers, a series	2	institution, and the warden directs or highest supervisor
3	of photographs, Defense Exhibits 32 through 38. I'll	3	on duty directs tear gas be administered or applied, then
4	start with 32.	4	officers would wear those tear gas masks so they could go
5	A. Yes, sir.	5	do their jobs and quell the situation.
6	Q. And ask if you can identify Defense Exhibit	6	Q. Now, we've heard use at least in Johnson County
7	No. 32.	7	jail of the pepper spray, and we talk about tear gas. Is
8	A. Okay. That one is an ad -- Administrative	8	there a difference?
9	Segregation housing area at an extended cell block.	9	A. Not really. They're all -- they all have the
10	Q. Okay. And that's part of the Texas Prison	10	same purpose. They're all similar in their composition.
11	System; is that correct?	11	One may be stronger than the other given the situation,
12	A. Yes, it is.	12	but they're pretty much the same.
13	Q. And that's representative of what an Ad-Seg unit	13	Q. And they're pretty effective, are they not?
14	or unit looks like; is that correct?	14	A. Yes, sir. There are some fellows that can -- it
15	A. Yes, sir, a more newer model.	15	doesn't phase them.
16	Q. Defense Exhibit No. 33, if you can identify	16	Q. But there are some it does phase?
17	that, please.	17	A. It phases most of them, yes, sir.
18	A. Yes, sir. This is the actual cell that the	18	Q. Phase most of them. Okay. All of these photos,
19	offender would be in. Yes, sir, that's with the seat and	19	Defense Exhibit twenty -- 32, excuse me, through 38, do
20	the writing area and the bunk.	20	they fairly and accurately depict the scenes as described
21	Q. And Defense Exhibit No. 34, please.	21	here, the Ad-Seg unit, the cells, the interior of the
22	A. Yes, sir. This is the actual outer door, the	22	cells, the security devices and the gas masks?
23	door to the cell with the two-slot windows and the food	23	A. Yes, they do. That's on a more modern facility.
24	slot for feeding him.	24	The older facilities, Administrative Segregation are a
25	Q. Okay. Defense Exhibit No. 35, please.	25	bit different.

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1 Q. How many modern facilities are there?
 2 A. There are five that I -- five on top of my head.
 3 Q. Okay. Five out of the 12 to 15?
 4 A. Yes, sir.
 5 MR. HEISKELL: Your Honor, at this time we offer Defense 32 through 38.
 6 MS. JACK: No objection.
 7 THE COURT: Admitted.
 8 (Defendant's Exhibit Nos. 32 - 38 admitted.)
 9 MR. HEISKELL: Thank you. May I publish,
 10 Your Honor?
 11 THE COURT: Yes, sir.
 12 Q. (BY MR. HEISKELL) Mr. Rogers, this is Defense Exhibit No. 32, and this is what we term an Administrative Segregation unit; is that correct?
 13 A. Yes, sir, that's one of the housing areas.
 14 Q. And we see the different cells that are lined up and down the rows here, the bottom floor, and I take it there are also cells on the top floor as well?
 15 A. That's correct, sir.
 16 Q. And these doors, can you explain how they lock and unlock?
 17 A. There's an officer in a control area pushes a button or turns a knob and that door will slide shut electrically.

1 No. 32?
 2 A. No, sir. That costs money and I don't think
 3 that would ever come to be.
 4 Q. Well, you've had money to be -- have these
 5 updated for the last few years?
 6 A. Yes, sir. When we say modern, these have been
 7 in place for several years, but.
 8 Q. Okay. I'm going to show you now Defense No. 33,
 9 sir. And tell us what that is.
 10 A. That's the actual cell. You see a bunk. Under
 11 the bunk you have storage space. And then you see a
 12 shelf to your upper left. Below that you'll see a
 13 desktop for writing, and then a chair he can sit on to
 14 write.
 15 Q. Okay. And what are the dimensions of this unit,
 16 sir, if you know?
 17 A. Not off the top of my head. I don't want to
 18 venture a guess on that. I used to know, but that's a
 19 figure I just don't know right now.
 20 Q. And if I -- let's pretend like this is a cell
 21 area with you here, and the front of your witness stand
 22 being part of the cell, could you tell me what dimensions
 23 would look like from here?
 24 A. Probably the front of this podium to you, to the
 25 jury box, the front of the jury box, and maybe a little

1 Q. Okay. And is that the only way that door will
 2 lock or unlock?
 3 A. No, sir, it can be hard keyed.
 4 Q. So it can be done electronically plus hard key?
 5 A. Or manually, it can be manually done.
 6 Q. And when we look at this area here, the hallway,
 7 is that used by the guards to patrol or walk, if you
 8 will, the unit?
 9 A. Yes, it is.
 10 Q. And that's both upstairs and downstairs; is that
 11 right?
 12 A. That's correct.
 13 Q. And what is the purpose for the guards to walk
 14 the unit, if you will?
 15 A. Well, they're walking to, number one, they could
 16 be doing count; number two, they could be doing security
 17 checks, which they're required to do every 15 minutes.
 18 They walk up and down the cell -- cell block looking into
 19 cells to see if an offender may have a medical problem, a
 20 seizure or something of that effect. But they count.
 21 They're just walking to make sure everything is safe and
 22 secure on that -- in that housing area.
 23 Q. Now, is there a plan for T.D.C. to eventually --
 24 you said this was a newer unit, if you will -- to upgrade
 25 all the units to appear in the same as Defense Exhibit

1 90 bit further. If you went that way maybe a foot.
 2 Roughly, roughly, very rough.
 3 Q. All right. And here, does it go back this far
 4 or I'm trying to look at --
 5 A. It goes to about where you would be. Maybe a
 6 little bit less. Yes, sir.
 7 Q. And then to the Jury box back over toward you?
 8 A. Yes, sir.
 9 Q. Defense Exhibit No. 34, Mr. Rogers, you see
 10 that?
 11 A. Well, you see two slotted windows, kind of look
 12 like eyes, where officers would look through to look at
 13 the offender, make sure he's all right. The horizontal
 14 slot is the food slot which is -- has a little door on it
 15 that's kept locked.
 16 Q. Okay. And this area here, the bottom door to
 17 the floor, is that flush to the floor? Is there any space
 18 there or can you explain that?
 19 A. I can't help you on that, sir. I don't know.
 20 Q. Let me -- maybe this one will help us out here.
 21 This is Defense No. 35, a door as well.
 22 A. Yes, sir, it -- it is flush to the floor. Looks
 23 like an outer plate has been tack-welded on there.
 24 Q. Okay. This is that outer plate?
 25 A. Yes, sir.

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1 Q. And what does is if persons who are within 2 Ad-Seg try to use what are called fishing lines, this 3 would help prevent that from taking place?		1 tear gas is utilized, the guards can wear that without 2 any fear of them being contaminated with the spray 3 itself; is that right?
4 A. Yes, it would.		4 A. Yes, sir, that's correct.
5 Q. And the fishing lines are those lines in which 6 inmates may wrap a line together on some type of piece of 7 metal or pin or whatever and push it out and pull it -- 8 push it down the row, so to speak?		5 Q. In order for -- we talked about some of those 6 boundaries and conditions before for people in 7 Administrative Segregation. Remember that reference to 8 commissary?
9 A. Yes, sir.		9 A. Yes, sir.
10 Q. So another inmate can kind of grab it and put 11 correspondence on there and the like.		10 Q. In order for a person to receive commissary, 11 they must have, I guess, some outside family or friend or 12 whatever that would put money on their books so that they 13 can purchase those items; is that correct?
12 A. Yes, sir.		14 A. Yes, sir, that is correct.
13 Q. But this particular plate prohibits that; is 14 that correct, sir?		15 Q. And if they don't have family, of course, then 16 they don't have any access to commissary for those people 17 at least to give them?
15 A. Yes, sir.		18 A. Other than friends or church members, folks like 19 that.
16 Q. No. 36, Mr. Rogers, that's obviously the commode 17 area, and is that a drink right above the commode?		20 Q. Okay. You -- a noncontact visit, when we talk 21 about through the Plexiglass, remember we talked about 22 that?
18 A. Yes, sir. He's got a sink to wash up in, brush 19 his teeth, comb his hair. And there's a polished metal 20 mirror in there. But, yes, he would actually put his -- 21 in the middle knob there, he would put his finger over 22 one of those running -- when the water is running down 23 into the sink, you put your finger over the hole and it 24 pushes it up so you can get a drink.		23 A. Yes, sir, I do.
25 Q. Okay. This right here?		24 Q. And with persons on the phone on one side of the 25 glass and the visitors on the other side of the glass, do
	94	96
1 A. Yes, sir.		1 they have to -- the inmate has to put down, I guess, a 2 visitation list of people?
2 Q. Okay. Now, Defense Exhibit No. 37, we're 3 talking about the security procedures as well as what's 4 available for the guards to utilize in case there's a 5 problem; is that right?		3 A. Yes, sir, he can have ten, ten approved folks on 4 his visitation list.
6 A. Yes, sir.		5 Q. And then, of course, it's up to those persons to 6 come down to whatever unit that person is in to visit for 7 that contact or noncontact visit to actually take place; 8 is that right?
7 Q. And these are the -- explain to the Jury what 8 these are.		9 A. That's right.
9 A. These are riot helmets. They are part of an 10 ensemble, if you will, of riot material, which includes 11 this helmet, with other -- there's a suit that officers 12 would wear should they have to quell a riot or if you 13 have an offender, for example, throwing items from a 14 cell, they need to go in and move him, take him out, 15 subdue him, then they would don this, this outfit. So 16 it's to protect themselves, protective clothing, to go in 17 and deal with the security issue.		10 Q. When we look at, Mr. Rogers, issues of 11 whether -- and I think this was kind of alluded to by 12 the Prosecutor -- whether you guys do a good job or not, 13 okay, I want to go back to that.
18 Q. And Defense Exhibit No. 38, explain what that 19 reflects.		14 A. Yes, sir.
20 A. The top shelf are -- those are the gas masks, 21 which would be part of that ensemble. On the bottom 22 shelf you see leg irons, you see plastic cuffs. There's 23 actually a -- looks like a plastic razor back there too. 24 And on the right side bottom you see three riot batons.		15 Q. And you've told us that these folks who were 16 employed by your facilities try to do the best they can 17 under the circumstances, many of them do?
25 Q. And these are the gas masks at the top. When		18 A. I believe they do.
		19 Q. And we're talking about virtually with 155,000 20 inmates, kind of a small city, are we not?
		21 A. Yes, sir.
		22 Q. A city of about the size of, what, Waco or maybe 23 a little larger than Waco?
		24 A. Waco, Tyler, San -- no, San Antonio has got more 25 than that, but close enough, I guess.

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1 Q. And when you look at what happens in those
 2 facilities, obviously when people -- by the way, how many
 3 correctional officers are employed by T.D.C.?

4 A. You guys are always asking me statistical stuff.
 5 I could give you off the top of my head 26,000 at least.
 6 There are a lot of correctional staff. I don't have the
 7 exact number for you. Of course, I can find that if you
 8 need it.

9 Q. So but approximately 26,000?

10 A. I'm -- about 26,000 as far as correctional
 11 officers.

12 Q. And you mentioned earlier about the training,
 13 excuse me, that the officers would go through once
 14 they're recruited; is that right?

15 A. Yes, sir.

16 Q. Are you involved in any aspect of training
 17 yourself?

18 A. No, sir, not with the correctional staff,
 19 correctional officers.

20 Q. Have you ever gone through any of the training
 21 or seen any of the training? Obviously you were a
 22 correctional officer.

23 A. Right. I had to go through the training.

24 Q. And how long ago was it that you went through
 25 your training?

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1 example of mother and children or even the Governor or
 2 something like that. Do you remember that?

3 A. Yes, sir, I do.

4 Q. When was the last time y'all had a mother and
 5 children held hostage?

6 A. I can't recall any of those.

7 Q. Can't recall any of them?

8 A. No, sir.

9 Q. The issues of -- I want to go back briefly now
 10 to the Security Threat Group issue, Mr. Rogers.

11 A. Yes, sir.

12 Q. And those inmates who may make an attempt to
 13 renounce, say someone decides after how many years of
 14 being a confirmed member and go through that two year or
 15 more process of renunciation, do you know what percentage
 16 of those are successful or not, from your knowledge of
 17 the renunciation program?

18 A. In -- with my involvement with sending offenders
 19 to the GRAD process and moving those offenders around the
 20 system who are exed, I would say a majority of them are
 21 successful at being in that status.

22 Q. And those persons who have to be watched for
 23 those two years or more, they're also asked to provide
 24 information or snitch on fellow gang members; isn't that
 25 true?

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1 A. I went through in 1982.
 2 Q. And things obviously have changed since 1982;
 3 would you agree?
 4 A. Yes, yes, I would agree.

5 Q. And training methodologies and concepts have
 6 changed over the years, have they not?

7 A. Yes, they have.

8 Q. Because you're dealing with, from 1982 time
 9 frame, a different type of inmate, a different class of
 10 inmate than you were back then, were you not?

11 A. I don't know that they're necessarily a
 12 different class of offender. I think they're -- I'm
 13 going to say yes to that. I think so, yes.

14 Q. And your training methodologies try to adapt to
 15 that because you recognize dealing with these different
 16 type of offenders as -- that may have existed back in
 17 1980s or even before then?

18 A. Yes.

19 Q. And those training programs are, if you will,
 20 they last for how many weeks again, Mr. Rogers?

21 A. Six weeks, yes, sir.

22 Q. The Prosecutor referenced hostage situations and
 23 so forth. Do you remember we talked about those signs --

24 A. Yes, sir.

25 Q. -- up there? And I think she threw out the

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1 A. As a -- as a requirement of their being exed, I
 2 don't think that they necessarily snitch. I'm not saying
 3 that information doesn't get hands changed to, you know,
 4 to get the ex status per se, but I'm just going to say not
 5 that I know of to that -- to any extent that comes to my
 6 knowledge.

7 MR. HEISKELL: Just a moment, Judge.

8 Q. Finally, Mr. Rogers, I just want to bring this
 9 up now. During the break, I asked you some questions.

10 A. Yes, sir, you did.

11 Q. About some of these things. Do you remember
 12 that?

13 A. Yes, I do.

14 Q. And you were up there -- I was up there by the
 15 witness stand just asking you some general questions
 16 about this whole matter; is that right?

17 A. Yes, sir, you did.

18 Q. And do you remember turning to me and saying,
 19 hey, I don't know if I should be talking to you because
 20 it may make the Prosecutors mad?

21 A. That's right.

22 Q. Now, you work for the State of Texas; is that
 23 right?

24 A. Yes, sir.

25 Q. And I guess you know my tax dollars and their

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1	tax dollars go to same pot?	1	of you. I saw that guy in the middle, I saw his picture
2	A. Yes, sir.	2	on the bar association wall out there, but other than
3	Q. And that hopefully you also know that you don't	3	that, I haven't -- I don't know you folks.
4	belong to the Prosecutors as a witness; you belong to the	4	Q. He's kind of famous that way. All right.
5	courtroom and to this Jury. Is that right?	5	Sorry. You're here as a result of a subpoena. You
6	A. That's right.	6	didn't volunteer to come down; is that correct?
7	Q. But you're fearful of talking to me --	7	A. No, I didn't ask for this.
8	A. No, sir, I'm not fearful of talking to you.	8	Q. Okay.
9	My -- in my mind, what I don't want to do is speak to	9	A. I'm sorry. I'm not trying to be disrespectful.
10	anyone out of turn in the court that may be detrimental	10	I'm just -- I'm just stating that.
11	either way. Earlier we mentioned the agenda, and I don't	11	Q. And the fact of the matter is you gave me a
12	have an agenda. All I want to do is honestly tell you	12	whole lot of bedtime reading last night, didn't you?
13	what I know as best I can. And, you know, who it	13	A. Yes, I did.
14	benefits is who it benefits. But I don't fear them. I	14	Q. You gave me the Offender Orientation Handbook,
15	don't think they're going to be angry with me. But I,	15	and I got a whole bunch of unit classification
16	you know, I don't want to talk out of turn to anyone	16	procedures?
17	really.	17	MR. HEISKELL: Excuse me, Your Honor, we
18	Q. And how many times have you talked to the	18	object to leading.
19	Prosecutors in preparation for your testimony?	19	THE COURT: Overruled.
20	A. I -- I arrived yesterday and we had a meeting	20	Q. (BY MS. JACK) You can go ahead and answer that.
21	yesterday afternoon about the testimony and what type of	21	You gave me a lot of reading and a lot of homework to do
22	questions would be asked of me. And I have spoken with	22	last night; is that fair to say?
23	the investigators. They came to Huntsville and we	23	A. Yes, I did, I did.
24	chatted about the situation and classification, how it	24	Q. And I did the best I could to understand it all?
25	relates to the Defendant here.	25	A. Yes.
	102		104
1	Q. And, of course, me nor my co-counsel were there,	1	Q. Okay. To try to understand 29 years worth of
2	right?	2	reality and 29 years worth of experience with T.D.C.J.;
3	A. No, sir.	3	is that correct?
4	MR. HEISKELL: Pass the witness.	4	A. That is correct.
5	REDIRECT EXAMINATION	5	Q. Ad-Seg, the only way an inmate gets into Ad-Seg
6	BY MS. JACK:	6	is the result of the choices he makes; is that correct?
7	Q. Well, Mr. Rogers, you and I just met last night;	7	A. That is correct.
8	is that correct?	8	Q. All right. Now, in Ad-Seg -- you know, the fact
9	A. Yes, that is correct.	9	of the matter is Counsel for the Defense put a document
10	Q. And you're here as a result of a subpoena; is	10	up there and he made a point --
11	that right?	11	MR. WESTFALL: Your Honor, may we have a
12	A. That is correct.	12	running objection to leading questions?
13	Q. That my investigator served on you, I don't	13	THE COURT: I haven't heard the question
14	know, eight weeks ago; is that right?	14	yet.
15	A. Roughly eight weeks, correct.	15	Ask the question.
16	Q. And that's because when it comes to	16	And pause before you answer it so I can see
17	classifications, you know exactly what's going on at	17	if there's an objection to the question.
18	T.D.C.; is that correct?	18	THE WITNESS: Yes, sir.
19	A. Yes, ma'am.	19	Q. (BY MS. JACK) Do you recall Counsel for the
20	Q. Okay. I never met you before last night,	20	Defense putting a document up there on the computer and
21	neither had my partner or either one of them; is that	21	pointing out the date, March 2012?
22	right?	22	A. (Pausing) Yes, I do.
23	MR. HEISKELL: Your Honor, we object to	23	MS. JACK: That was the end of my question.
24	Counsel leading the witness.	24	THE WITNESS: I don't want to piss the Judge
25	A. Not that I know of. I don't recall meeting any	25	off. I'm sorry. I won't be invited back, I guess.

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1	Q. All right. And did the document include the word "supercedes" and gives a date?	1	Q. All right. And one of the documents, I forget which one, that Counsel for the Defense gave you or showed this Jury, said there were two ways to keep somebody in Ad-Seg, security threat -- or security threat; is that correct?
2	A. Yes, it does.	2	A. If he's a threat to safety and security, yes.
3	Q. And is that because the policies that control	3	Q. If somebody disavows their gang membership and succeeds in convincing those investigators, and serving
4	Administrative Segregation change?	4	a life sentence without parole, where do they go?
5	A. Yes.	5	A. I'm sorry. Repeat that question.
6	Q. Frequently?	6	Q. I didn't ask it very well.
7	A. I wouldn't say frequently, but from time to	7	A. Something -- something took my mind away there.
8	time, yes.	8	Q. The GRAD program.
9	Q. What causes a change?	9	A. Yes.
10	A. Internally we may have issues that we may need	10	Q. All right. And that's in the Offender
11	to address to make the Ad-Seg areas safer and secure for	11	Orientation Handbook, isn't it?
12	all. We may need to change a policy, tweak it. Outside,	12	A. Yes, it is.
13	the state legislature has a lot to do with how we	13	Q. If somebody, regardless of the offense that
14	administer our policies, procedures. We have to be in	14	they've been convicted of, regardless of their sentence,
15	line with state and federal law.	15	satisfactorily graduates from disavowing their gang or
16	Q. And in the Offender Orientation Handbook that	16	that program, where do they go?
17	you provided me, which is over a hundred pages, are there	17	A. They go into General Population.
18	several references to the legislature and when certain	18	Q. And with regard to being exed out, isn't one of
19	policies were put into effect?	19	the very first steps striking a line through a tattoo
20	A. Yes.	20	that would be their gang membership sign?
21	Q. And that is because the legislature can change	21	
22	the policy regarding Ad-Seg anytime they want?	22	
23	A. Yes, they could.	23	
24	Q. If they pass a legislation that says release	24	
25		25	
	106		108
1	everyone in Administrative Segregation in the next	1	A. Yes, that would be a good indicator.
2	session, what happens?	2	Q. So if an individual has a strike through the
3	A. We would have to do it, with strong objection to	3	"TS", Texas Syndicate, for instance, that would be the
4	the legislature.	4	first step in convincing those guards, the staff, that
5	Q. But does everybody in Administrative	5	they are no longer a member of the gang and want to be in
6	Segregation, would they be released into General	6	General Population?
7	Population?	7	A. That would certainly help, but what's going to
8	A. If so ordered, we would have to follow -- obey	8	happen is when he contacts the Security Threat Group
9	that law, yes.	9	office, they're going to call him down to fill out
10	Q. And you've been a member of the staff of	10	paperwork where he signs a piece of paper saying I hereby
11	T.D.C.J. for almost 30 years. In terms of the trends	11	renounce my affiliation.
12	that you have seen over the years, where is the	12	Q. And we take his word for it?
13	legislature trending on Administrative Segregation and	13	A. Yes, we do.
14	security within the prison?	14	Q. Because if they're in Administrative
15	A. After this session, legislation came out that	15	Segregation, they're only out for an hour a day; is that
16	would require officials to take another look at the	16	right?
17	Administrative Segregation policies and how long we keep	17	A. Right.
18	these offenders in Ad-Seg. That's -- that's the trend.	18	Q. They're not around other offenders, are they?
19	Apparently, some folks in society think we are keeping	19	A. No, no, ma'am.
20	offenders locked up in Administrative Segregation just	20	Q. So we really can't monitor whether or not
21	too long.	21	they're still actively involved in their gang, can we?
22	Q. So the trend is to release more from	22	A. No.
23	Administrative Segregation into General Population; is	23	Q. When they're out on the rec yard, they're by
24	that correct?	24	themselves, aren't they?
25	A. Yes, it is.	25	A. Yes. There could be other offenders in a -- in

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1	a chain-link fenced cage next to them that they could	1	right?
2	talk to, but not physical contact per se.	2	A. Yes.
3	Q. So it's a lot more difficult to truly gauge	3	Q. He would be allowed to hold his loved one
4	whether or not somebody has disavowed their gang; is that	4	that -- hold their hand?
5	right?	5	A. Yes.
6	MR. WESTFALL: That was a leading question,	6	Q. He would be allowed to kiss his loved one?
7	Your Honor. We object to it.	7	A. Yes, he would.
8	THE COURT: Sustain.	8	Q. He would be allowed to tell --
9	Q. (BY MS. JACK) Okay. The majority of	9	MR. HEISKELL: Excuse me. We still object
10	individuals who sign up for this GRAD program succeed in	10	to leading, Judge. It's her witness.
11	leaving Administrative Segregation and going to General	11	THE COURT: Sustain.
12	Population; is that correct?	12	MR. HEISKELL: Thank you.
13	A. That's correct.	13	Q. (BY MS. JACK) All right. Would he be allowed
14	Q. The majority of them?	14	to tell his loved one he loved them?
15	A. Right. I would say the majority.	15	A. Yes, he would.
16	Q. Individuals who are serving life sentences	16	MR. HEISKELL: Same objection, Your Honor.
17	without parole have graduated from this GRAD program,	17	THE COURT: Overruled.
18	have they not?	18	Q. (BY MS. JACK) Counsel for the Defense asked you
19	A. Yes.	19	about Administrative Segregation. How much room is there
20	Q. They are in General Population, are they not?	20	in Administrative Segregation right now?
21	A. Yes.	21	A. Again, I don't have an exact number how much,
22	Q. In somewhat a little bit above minimum security	22	but in a recent meeting with our Deputy Director of
23	facilities; is that right?	23	Operations -- excuse me, Support Services, the indication
24	A. Security -- facilities that are designated G --	24	is that we are filling up rather significantly in
25	that can house G3 custody, yes.	25	Administrative Segregation.
	110		112
1	Q. Okay. How many of our units can house G3?	1	Q. We're almost full, aren't we?
2	A. 29 units can house G3 custody that we actually	2	A. I think so.
3	assign to. Some units have G3 custody, for example, a	3	Q. And when Counsel for the Defense is showing you
4	medical facility, but that's just to accommodate -- you	4	the gear for riots, that's because riots occur, don't
5	can't turn a guy down for medical treatment because of	5	they?
6	his custody, so they have like a G3, but it's just	6	A. Yes.
7	temporary. But 29 effectively that we assign inmates to.	7	Q. What happens when a riot occurs?
8	Q. Individuals in G3 population can have	8	A. When a riot occurs, people get hurt.
9	unit-to-unit visitation, can't they?	9	Q. Who gets hurt?
10	A. Intra-unit visits, yes, they can.	10	A. Staff and offenders get hurt.
11	Q. In other words, an inmate from one unit can	11	Q. And that gear the Counsel for the Defense showed
12	actually be transported to another unit because they want	12	the Jury, that's great for self-defense, if you can get
13	to visit if they're in General Population; is that	13	to it in time?
14	correct?	14	A. Yes.
15	A. Yes, they can.	15	Q. Have you seen instances where guards have been
16	Q. Inmates with a G3, G4 visit -- excuse me,	16	seriously hurt?
17	classification can have contact visits with their loved	17	A. Yes.
18	ones?	18	Q. Have you seen instances where guards have been
19	A. G1, 2 and 3.	19	taken hostage?
20	Q. G1, 2 and 3?	20	A. Yes.
21	A. Yes.	21	Q. Have you seen instances where a warden was
22	Q. And Mr. Soliz, in fairness, would never be below	22	seriously hurt?
23	a G3, at least as the legislature sees fit right now?	23	A. Yes, I do, I did.
24	A. Correct.	24	Q. Have you seen instances where a guard is killed?
25	Q. He would be allowed contact visits; is that	25	A. Yes.

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1	Q. Just the sheer number of it, the sheer number	1	you can on the witness stand in trying to convey certain
2	of inmates prevents staff from being safe; is that	2	matters and certain factors; isn't that true?
3	correct?	3	A. I want to be truthful is what I want to do.
4	A. That's a -- I believe so, yes.	4	Q. And when we talked about being truthful,
5	Q. Okay. And when Counsel for the Defense asked	5	obviously you want to be able to sway a Jury in trying to
6	you about when the last time was that a mother and child	6	be effective in your testimony, isn't that true?
7	were held hostage, in 2000, the Texas Seven occurred,	7	A. I'm not sure how to answer that because I'm not
8	didn't it?	8	really -- again, I just say what I say, and then how it
9	A. Yes.	9	sways them or affects them is -- I'm -- I don't really
10	Q. Seven inmates escaped from T.D.C., did they not?	10	come in here trying to really sway anybody. I just want
11	A. Yes, they did.	11	to enlighten people as to what goes on in prison.
12	Q. And an Irving police officer was killed while	12	Q. And I guess what I -- what I'm getting at is,
13	they were out?	13	what I'm hearing is, your -- part of your duties and
14	A. Yes.	14	responsibilities is to do the classification, come
15	Q. In 2003, was there an escape and a murder by an	15	into court and testify so people can get death
16	inmate from T.D.C.?	16	sentences as opposed to life without parole to ease the
17	A. That's one I'm not -- I'm not familiar with that	17	workload.
18	one.	18	A. I don't -- I don't know that it's -- I don't
19	Q. Okay. In 2007, was that when the high rider was	19	know about the "ease the workload" thing, but I know the
20	killed outside of T.D.C.J.?	20	Prosecution's purpose is to try to get him the death
21	A. Yes, ma'am.	21	sentence. And your purpose is probably to get him life
22	Q. Since this Jury has been convened, has an	22	without parole. Whether it's to ease the load or not, I
23	individual serving a life sentence without parole at	23	don't think I can agree with that per se. It's not
24	T.D.C.J. committed a murder?	24	really my position to agree or disagree with that.
25	A. Yes.	25	(Pause in proceeding.)
	114		116
1	Q. Within three weeks ago; is that correct?	1	MR. HEISKELL: Pass the witness. That's all.
2	A. Yes, ma'am.	2	FURTHER REDIRECT EXAMINATION
3	Q. We've had three homicides at T.D.C.J. in the	3	BY MS. JACK:
4	last month, have we not?	4	Q. And part of the reason why we believe the death
5	A. Yes.	5	sentence is appropriate is because the most secure place
6	Q. And all those things, whether it's Ad-Seg or	6	for Mr. Soliz is Death Row; is that right?
7	whether it's General Population that this Defendant if he	7	A. Yes.
8	receives a life sentence without parole, are all things	8	Q. And because the crime merits it, more
9	that the victim in this case will never get to do again;	9	importantly; is that right?
10	is that correct?	10	A. In my opinion, yes.
11	A. Right. That's correct.	11	MS. JACK: I'll pass the witness.
12	MS. JACK: I'll pass this witness.	12	FURTHER RECROSS-EXAMINATION
13	RECROSS-EXAMINATION	13	BY MR. HEISKELL:
14	BY MR. HEISKELL:	14	Q. So I guess your opinion is persons convicted of
15	Q. Mr. Rogers, you -- how many times have you	15	capital, capital murder should always get the death
16	testified before for the State in capital murder cases?	16	penalty. That's a true statement, isn't it, Mr. Rogers?
17	A. 15 to 20 or so.	17	A. I'm going to say that if an offender is found
18	Q. And that's part of your job duties and	18	guilty, and some of the heinous things that I have seen
19	responsibilities with the State, to come and testify; is	19	individuals do, I'm a proponent of the death penalty,
20	that right?	20	yes.
21	A. Yes, sir, it is correct.	21	MR. HEISKELL: That's all. Thank you.
22	Q. And to come testify for the State to try to get	22	MS. JACK: I have nothing further of this
23	the Jury to do a death sentence; is that right?	23	witness, Your Honor.
24	A. Yeah, it's my understanding.	24	THE COURT: May the witness be excused?
25	Q. And in doing so, you want to be as effective as	25	MR. HEISKELL: Yes.

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1 MS. JACK: Yes, Your Honor.

2 THE COURT: You may be excused.

3 THE WITNESS: Thank you, sir.

4 (Witness excused.)

5 THE COURT: At this time, we'll recess for
6 lunch till 1:15.

7 (Recess taken from 11:44 a.m. to 1:17 p.m.)

8 (Defendant present.)

9 (Jury not present.)

10 THE COURT: State ready to proceed?

11 MR. CHAMBLESS: Well, Your Honor, we have --
12 the next witness I anticipate will be Dr. David Self.
13 I've told Greg Westfall that he is our next witness and
14 what I anticipate he'll testify about. I think he wants
15 a 705 hearing.16 MR. WESTFALL: Brief 705 hearing, Your
17 Honor.

18 THE COURT: Okay.

19 MR. CHAMBLESS: We would call Dr. David
20 Self at this time for the purpose of this hearing.21 THE COURT: The record will show the
22 attorneys for the State and Defense are present, the
23 Defendant is present, the Jury is not present at this
24 time.

25 (Witness sworn.)

1 some notion of an individual's characteristics that would
2 contribute to or would mitigate against their likelihood
3 to commit a violent act.4 Q. Is there a difference and a distinction between
5 risk assessment, assigning someone to a risk assessment
6 category and a -- making a statement about prediction of
7 future violence?8 A. Yes, sir. Mental health science, psychiatry and
9 psychology, have reckoned with the fact that our accuracy
10 in these matters is not sufficient to ethically permit
11 categorical prediction that an individual will or won't
12 commit a violent act. We are comfortable though on using
13 research-based factors, these empirical correlates of
14 violence, in looking for the presence or the absence of
15 those in an individual, looking at details of their case
16 and the specifics we know about them clinically, and
17 combining that into an estimate of the level of risk they
18 pose relative to some population in some environment.

19 Q. Okay. How many -- what are the risk levels?

20 A. Well, there's no -- I think the honest way to do
21 it is not to imply that there's some precision and, you
22 know, give these finite 92 or 31 percents. We use low,
23 medium and high, a fairly broad estimation.24 Q. Okay. What is the methodology that you use and
25 others use in this risk assessment?

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1 DAVID SELF,

2 Having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. CHAMBLESS:

5 Q. Please state your name.

6 A. David Self.

7 Q. And are you a licensed psychiatrist in the State
8 of Texas?9 A. Yes, sir, I'm a Medical Doctor specialized in
10 psychiatry and licensed in the State of Texas.11 Q. And describe your employment at Rusk State
12 Hospital.13 A. Well, I'm currently employed there on a part-
14 time basis. I work there two days a week. I've been
15 associated with that hospital since 1991. I retired from
16 there in May of '09 and went back in March '10 on a
17 half-time basis. I work on the forensic service there.18 Q. All right. And as part of your work in the past
19 and your work in the present, does it involve doing a --
20 something called a risk assessment?21 A. Yes, sir. The assessment of risk is part and
22 parcel of every day of my work, clinically as well as my
23 practice apart from that.

24 Q. What is a risk assessment, generally?

25 A. A risk assessment is a method of arriving at

1 A. Well, we collect all the facts about the history
2 of the individual that we can. And we're looking again
3 for these factors that have been demonstrated through
4 empiric research and they're reliable in study after
5 study as far as their contribution to the individual's
6 likelihood of committing a violent act. Once we have
7 those factors defined and that history and we have done a
8 thorough psychiatric evaluation, in my particular case,
9 we combine all that and we utilize clinical judgment at
10 that point to weight those factors and to arrive at an
11 estimate of their risk.

12 Q. Okay.

13 A. This method is called in the literature the
14 structured professional judgment or structured clinical
15 judgment.16 Q. Is this -- do you keep current in the literature
17 in this area?

18 A. Yes, sir, I do.

19 Q. And with respect to individuals that you do this
20 for, for example, is there a population of individuals at
21 Rusk who are there because they've been found not guilty
22 by reason of insanity?23 A. Yes, sir. Rusk State Hospital is a state-
24 operated psychiatric facility that houses basically three
25 populations. About half of the place is dedicated to

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	121	1 practice, and it works out about 50/50 as far as being 2 sided in a case. I'm called for the state about half the 3 time and the defense about half the time. Then, of 4 course, there's another body of cases that are court 5 appointments that are neither here nor there. 6 Q. Okay. You also -- do you also do risk 7 assessments in connection with civil issues pertaining to 8 sexual predators? 9 A. I do. I'm frequently retained by the Special 10 Prosecution Unit, Civil Division, and would take 11 appointment from the counsel for offenders as well, the 12 defense side, to evaluate folks that are fixing to be 13 released from prison about their risk of future sexual 14 violence.	123
11	Q. Are yearly assessments required of those who 12 have been acquitted of criminal offenses but who are 13 there because they have been considered to be a risk of 14 danger to themselves or others?		15 Q. Are you part of a statewide committee involved 16 in looking at maximum security issues?
15	A. Yes, sir. The statute requires at least on a 16 12-month basis that we report back to the district court 17 that has jurisdiction over that case and offer an opinion 18 about whether or not the individual can safely be managed 19 in a less restrictive environment, which entails a risk 20 assessment.		17 A. I'm not any longer. I was for a number of years 18 on the statewide -- it was MHMR then, and then the 19 Department of Health Services have a cadre of experts 20 that they use to go to the maximum security hospital at 21 Vernon and where they have statutorily a obligation to 22 review their dangerousness, called the Manifest 23 Dangerousness Review Board, and I served on that for 24 many years.
21	Q. Is the methodology that you've spoken about 22 applied in that context?		25 Q. Now, specifically, to go back to the methodology
23	A. Yes, sir, it's pretty much the same across 24 different populations in legal questions that we rely on 25 research-based factors that we have confidence, have been		
122	demonstrated to contribute to risk, and then combining 2 those in a fashion and weighting them and arriving at a 3 judgment. It's pretty much the same process regardless.		1 here, are you here this afternoon to testify simply about 2 the risk assessment tool and the empirical factors that 3 play in to the risk assessment evaluation?
4	Q. Is this methodology and risk assessment tool 5 that -- or procedure that you've spoken about, is it 6 generally accepted in the psychiatric community to which 7 you belong?		4 A. Yes, sir.
8	A. Yes, sir, it is.		5 Q. For example, is one of those factors 6 demographic?
9	Q. All right. And have you testified about this 10 risk assessment process in the courts of this state?		7 A. Yes, sir.
11	A. Yes, sir, many times.		8 Q. And is another a history of violence?
12	Q. Okay. Have you testified specifically in 13 capital murder cases about risk assessment including the 14 methodology that you spoke of this afternoon?		9 A. Yes, sir.
15	A. Yes, sir, I have.		10 Q. Is another the age of a person when they first 11 become involved in criminal activity?
16	Q. Okay. And approximately how many cases have --		12 A. Yes, sir.
17	of capital murder cases, for example, have you been 18 involved with?		13 Q. Is another relationship factors?
19	A. It would be a really rough approximation. And 20 I would hate to be held to -- up to the fire over the 21 accuracy of it, but I would guess somewhere between 20 22 and 30.		14 A. Yes, sir.
23	Q. Okay. Do you testify or are you consulted and 24 possibly testify sometimes for the defense?		15 Q. And is another employment issue?
25	A. You know, over time, I've looked back at my		16 A. Yes, sir.
			17 Q. Is another substance abuse problems?
			18 A. Yes, sir.
			19 Q. And are additional factors major mental illness, 20 personality disorders and contextual factors?
			21 A. Yes, sir.
			22 Q. All right. And are you speaking in general 23 terms of those factors and the weight you give those 24 factors as an aid to the Jury?
			25 A. Yes, sir.

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1 MR. CHAMBLESS: Pass the witness.

2 MR. WESTFALL: Your Honor, may I approach?

3 THE COURT: Yes, you may.

4 MR. WESTFALL: Dr. Self, may I see whatever
5 you have up here with you?

6 THE WITNESS: Yes, sir.

7 MR. WESTFALL: Thank you.

8 (Pause in proceeding.)

9 CROSS-EXAMINATION

10 BY MR. WESTFALL:

11 Q. Dr. Self, are you -- are you here to make any
12 conclusions about whether Mark Soliz is a low risk, a
13 high risk or a medium risk?

14 A. No, sir, I'm not.

15 Q. Do you -- have you ever had anything to do with
16 the T.D.C. classification process?17 A. No, sir, I have not. Well, I say nothing to do
18 with. I spent a lot of time in penitentiary charts and
19 such, but as far as me having an active role in the
20 process, no.

21 Q. Right. Making decisions about where people --

22 A. No, I'm not involved in that at all.

23 Q. Tell us about the empirical research, if you
24 don't mind.

25 A. Okay. Could you narrow that down a little bit

1 A. Okay. You have historical factors, and under
2 that, the violence history is of particular import, of
3 course, in a matter where you're trying to assess risk
4 for future acts of criminal violence. Okay. There's
5 also a quantitative assessment of that. You look at the
6 number of acts, the type and number of acts. Then
7 there's a qualitative assessment of that. We have
8 various typologies of violence that have been
9 demonstrated to have import in this notion of predicting
10 someone's likelihood of future acts.11 An isolated factor that has been shown to be
12 valid as far as contributing to risk is the age at which
13 the individual first commits criminal or violent acts;
14 how early in life they started that.15 There is several that pertain to social
16 stability that are -- I have broken out here, rather than
17 use the broad header. Relationship instability, the
18 individual's ability to form adult -- and usually means
19 intimate, romantic type relationships, to basically enter
20 into marital type relationships. Employment history has
21 been shown over and over to be of import. And so those
22 kind of wrap up that social stability idea.23 Substance abuse issues have been shown over
24 and over now; certain substance abuse issues have been
25 shown to contribute to the risk of violence. Okay. In

1 for me?

2 Q. You have those factors there.

3 A. Yeah.

4 Q. And you said that study after study has
5 confirmed the factors?

6 A. Yes, sir.

7 Q. Could you please just, once again, tell us the
8 factors.9 A. Okay. In general, the demographic factors are
10 of import, the sex, the age, socioeconomic status of the
11 individual in question. And those have all been looked
12 at over time. The way all these are arrived at is
13 empirically. It's a straight ahead research. You look
14 for -- it's similar to what insurance companies do with
15 their actuarials. You look for the presence of a factor
16 in a population. Then you look for the incidents of
17 whatever is of interest, you know, be it automobile
18 wrecks in teenagers or whatever, so.

19 Q. Right.

20 A. And then these have all been borne out over
21 multiple research projects of that sort, empirical
22 research projects, and have been demonstrated time and
23 again, now are accepted into the profession as basically
24 factual. Do you want me to go through the list?

25 Q. Please.

1 particular, psychostimulants and ethanol, alcohol, have
2 been shown to greatly increase the risk of violence;
3 people that have a propensity for use. And there's
4 quantitative issues in that, not just do they use them.
5 If they use them every blue moon, obviously you don't
6 weight it very heavily; but if they use them frequently,
7 it's a regular part of life, if they recur to it over the
8 years after years, then it becomes of more import.9 We also look at major mental illnesses. And
10 the relationship here gets a little bit trickier because
11 it's not just the presence or absence of major mental
12 illnesses. You have to get into the specific illness and
13 the specific symptoms. Certain symptoms of certain
14 illnesses have been shown to be associated with an
15 increased risk of violence. An example of this would be
16 paranoid delusions. If someone believes that they're
17 being attacked by someone else, they're very likely to
18 become violent in either a preemptive way or retributive
19 way. Manic excitement would be another one of those.20 Personality disorders. Certain personality
21 disorders in particular, antisocial, borderline
22 personality disorders are associated with an increased
23 risk of violence.24 Kind of a sub group of antisocial
25 personality disorder, psychopathy or psychopaths have

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1	been shown to be at especially high risk. So we're 2 always looking for that.	1	commit violence, all the time, about commitments to 2 hospitals, discharges from hospitals, in forensic matters 3 of all sorts, and dispositions are made, so, you know, 4 rather than the old way of doing this was that clinicians 5 would simply kind of, you know, eyeball it and have a 6 hunch and go on about their business, the Jim Grigson 7 method, the purely clinical method. People have tried 8 to make this more methodologic and it will advance the 9 actuarial method where you have some precooked 10 algorithmic approach to these same factors, but they 11 weigh them in and you have a fixed scoring and there's 12 not any leeway for including what you can see and know 13 about the specifics.
12	As I said earlier in response to Defense's 13 questions, we're not just looking at these in terms of 14 global risk. We're looking at them in a context of an 15 environment they're headed for, in a population we're 16 going to compare them to. So in whatever the question at 17 hand is, the style is that. And we're real interested 18 there in factors in that environment that may influence 19 that propensity for violence, that likelihood of violence 20 one way or the other. Okay.	14	And so somewhere in between those two 15 standards is the structured professional judgment or 16 structured clinical judgment method, which most of the 17 learned treatises and texts hold to be the way we ought 18 to be doing business.
21	Q. So is that all the factors?	19	Q. But an actuarial model is a model that's been 20 worked out mathematically, it has a -- has percentages 21 attached to different factors, something that's been 22 derived through a procedure where we can see, where there 23 would be -- where you could bring something to court 24 where we could see the empirical data that underlies it. 25 But I guess you're telling me that there isn't any?
26	A. That's pretty much all, yes.	130	
27	Q. And how are you going to apply these factors to 28 Mark Soliz?	1	A. I'm not telling you that.
29	A. Today?	2	Q. Okay. Then where is it?
30	Q. Yes.	3	A. Where is what?
31	A. I'm not.	4	Q. Where's the empirical data that underlies these 32 factors?
33	Q. You're not going to apply those at all to him?	6	A. Well, it's published in every major text or 34 treatise there is about this. I didn't bring one to 35 court with me but I can -- I can if you would like. I 36 mean, this is -- this is not a rarity. This is the way 37 business is done in the profession and the way it's 38 accepted that we can ethically arrive at these estimates, 39 as long as we stay within the bounds of what we're really 40 capable of doing.
41	A. What I have been asked to do is to provide the 42 Jury with an understanding of how a mental health 43 professional who does this as a matter of course, day in, 44 day out, arrive at this decision about someone's risk 45 level, how we go about looking at information to make 46 that decision.	41	Q. What would be the most important text that would 42 contain --
47	Q. Okay. Then I guess that's all the questioning I 48 had. Now, I asked you -- you said empirical research, 49 study after study, and I guess I might have gotten you 50 off on the risk factors. Can you name some of the 51 studies that support this?	46	A. I couldn't tell you a most important text. 47 There -- I mean, there's just -- there's hundreds of 48 them.
52	A. No, not right off the top of my head I can't 53 give you a bibliography. Again, these don't hinge on one 54 isolated study that happened, you know, very recently. 55 These have been established to the point that they're 56 well accepted in the field.	49	Q. Tell me your favorite one.
57	Q. Is there a -- is there a sampling error that we 58 can apply to this or a standard deviation?	50	A. It's the Psychologic Evaluations for the Court 51 by Melton.
59	A. There is not a statistically arrived at error 60 rate, no. There have been evaluations of this type of 61 method that have been done, that have arrived at a notion 62 that is an acceptable rate, that it's better than chance, 63 significantly better than chance, which is an improvement 64 over the older studies and such.	52	Q. And is there -- is there any -- are these 65 factors differently weighted? Are some more important 66 than others?
67	Q. And when you do one of these risk assessments, 68 why are you doing it?	53	A. Well, that's where a structured professional
69	A. To make -- it depends on what context I'm doing 70 it in.	54	
71	Q. Why was it invented?	55	
72	A. Well, because we are asked to make decisions or 73 to help make decisions about violence, persons that might	56	

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1 judgment approach varies from the actuarial. You have to
 2 exercise some judgment in weighting them. And if you use
 3 an algorithmic approach, that weighting, that algorithmic
 4 thing is locked in, and that's where most -- most of the
 5 difficulty comes. All the actuaries I'm aware of offer
 6 the caveat they are not to be taken in isolation, that
 7 there must be clinical judgment exercised about how to
 8 interpret those findings.

9 Q. Race used to be a factor in this, right?

10 A. Sir, I have never seen it published, no. And
 11 I'll tell you my understanding is that the studies on
 12 race have found that socioeconomic status wipes out any
 13 differences. If you hold socioeconomic status constant,
 14 race is not a predictor.

15 Q. And the point of this, this analysis is to
 16 figure out the probability that somebody is going to
 17 commit violent acts?

18 A. No.

19 Q. What is the point of it?

20 A. It's to say that if you -- once you've described
 21 these factors that are present, that if you will -- if
 22 you'll imagine a group of people, it's not to say that
 23 individual "X", a defendant in this matter or a patient
 24 in another, individual X will or won't commit an act, or
 25 even a probabilistic statement about will or won't. It's

1 MR. CHAMBLESS: Okay, Your Honor.

2 THE COURT: And I don't understand the
 3 science behind the analysis.

4 MR. CHAMBLESS: Okay.

5 THE COURT: That's where I am at the
 6 moment. So if you have any information or more testimony
 7 that you wish to elicit to help me understand why it's
 8 necessary and why it's reasonably accurate and how it
 9 applies to this particular case, that would be helpful.

10 MR. CHAMBLESS: Very well. At this time,
 11 Your Honor, we'll withdraw our offer through this witness
 12 at this time and revisit it at a later time.

13 THE COURT: Okay. You may step down.
 14 Is the State ready to proceed?

15 MR. CHAMBLESS: Yes, sir.

16 THE COURT: Defense ready to proceed?

17 MR. HEISKELL: Yes.

18 MR. WESTFALL: We are, Your Honor.

19 THE COURT: You may bring in the Jury.
 20 (Pause in proceeding.)

21 (Jury present.)

22 THE COURT: You may be seated.

23 MR. STRAHAN: At this time, Your Honor, the
 24 State of Texas would respectfully rest its case on
 25 Punishment.

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1 to say people that have -- that look like this are at a
 2 low, a medium or a high risk relative to some comparative
 3 population of committing acts of violence.

4 Q. What would be the comparative population?

5 A. In this case it would be prison inmates, I mean
 6 if we're talking specifically about this case.

7 Q. Okay. But you -- you can't apply this to this
 8 case at this point?

9 A. No.

10 MR. WESTFALL: That's all the questioning I
 11 have, Your Honor.

12 Number one, I don't think they've proven by
 13 clear and convincing evidence that -- that this is
 14 relevant or that his data underlies his conclusions; but
 15 number two, it's not going to be applied to the case,
 16 it's just going to be abstract testimony. Therefore, it's
 17 not relevant, and we'd object to the testimony, period.

18 THE COURT: Do you have a rebuttal argument
 19 or rebuttal questioning?

20 MR. CHAMBLESS: I do not at this time. If
 21 the Court would like to -- would the Court like to hear
 22 some further?

23 THE COURT: I -- I don't understand the
 24 relevance of the testimony if it's not going to be
 25 applied to this particular Defendant.

1 MR. WESTFALL: Your Honor, we call Krishna
 2 Flores. Krishna.

3 THE COURT: You were sworn in the other
 4 day. You may be seated. Can you scoot forward a little
 5 bit. Pull the microphone down so it's pointed at your
 6 mouth. Thank you.

7 KRISHA FLORES,

8 Having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. WESTFALL:

11 Q. Ms. Flores, how you doing?

12 A. Fine.

13 Q. Would you please state your -- your name just
 14 for the record, for the Jury.

15 A. It's Krisha Flores.

16 Q. And speak up a little bit.

17 A. It's Krisha Flores.

18 Q. Okay. And where do you live? Where do you
 19 live?

20 A. At 81 -- in Fort Worth.

21 Q. Fort Worth?

22 A. The whole address?

23 Q. I don't need your address. Just wanted --

24 A. In Fort Worth.

25 Q. And do you know Mark over here?

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1 A. Yes, sir.
 2 Q. How do you know him?
 3 A. That's my cousin.
 4 Q. How old are you?
 5 A. 36.
 6 Q. And do you have any kids?
 7 A. Yes, sir.
 8 Q. How many?
 9 A. I have four.
 10 Q. How old are they?
 11 A. One is 17, a 16-year-old, 14, and a 10-year-old.
 12 Q. I would like to go through the Soliz family just
 13 with you and kind of line out who all the people are in
 14 the family. Can we do that?
 15 A. Okay.
 16 Q. Can you see this?
 17 A. Barely.
 18 Q. With your grandmother, what were their names,
 19 your grandmother and grandfather?
 20 A. Vic -- Vicky Soliz and Santos Soliz.
 21 Q. And where did Vicky and Santos live?
 22 A. On the north side of Fort Worth, Houston.
 23 Q. Houston Street?
 24 A. Yes.
 25 Q. At 3113 Houston?

1 Ruby, and Kathryn.
 2 Q. And then there was?
 3 A. Two boys.
 4 Q. Two boys?
 5 A. Yes.
 6 Q. Okay. Who are they?
 7 A. Gary Soliz and Mike Soliz.
 8 Q. Okay. Now, can you tell me who Lizzie's kids
 9 are?
 10 A. Patrick, and he passed away.
 11 Q. Okay.
 12 A. And it's Eric, Joey.
 13 Q. Joey?
 14 A. Uh-huh. And Crystal.
 15 Q. And Donna?
 16 A. Is Mark, Mike.
 17 Q. And Vicky?
 18 A. Yolanda, JoAnna, Sonia, Freddy, and Veronica.
 19 Q. And Francis?
 20 A. Monica and Leticia.
 21 Q. How about Cynthia?
 22 A. It was Michelle, Romero.
 23 Q. Romero is first name?
 24 A. Yes. Sophia, Sandra and Angelina.
 25 Q. Angelina?

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1 A. Yes, sir.
 2 Q. And they had a lot of children, didn't they?
 3 A. Yes.
 4 Q. How many?
 5 A. It was ten girls and two boys.
 6 Q. And do you know all their names?
 7 A. Yes, sir.
 8 Q. Can you just sort of take them in turn?
 9 A. Lizzie Soliz.
 10 Q. Lizzie?
 11 A. Liz.
 12 Q. Who is that?
 13 A. My aunt.
 14 Q. And is that one of Donna Soliz's sisters?
 15 A. Yes, sir.
 16 Q. And Donna Soliz is your aunt also?
 17 A. Yes, sir.
 18 Q. Who else?
 19 A. It's Donna, and Victoria Soliz.
 20 Q. Donna and Victoria?
 21 A. Yes, sir.
 22 Q. Does she go by Vicky?
 23 A. Yes.
 24 Q. Who else?
 25 A. Francis, Cynthia Soliz, Carolyn, Rita, Sharon,

1 A. Yes.
 2 Q. And then Carolyn?
 3 A. It was Stephanie.
 4 Q. All right.
 5 A. Stevie.
 6 Q. Stevie?
 7 A. Uh-huh. Raul, Jennifer, Artrevino.
 8 Q. Artrevino?
 9 A. Artrevino.
 10 Q. Like A-R-T-R-E-V-I-N-O with the tilde on the
 11 end?
 12 A. I think so.
 13 Q. All right.
 14 A. Christina and Anna.
 15 Q. And how about Rita?
 16 A. She don't have no kids.
 17 Q. Okay. And Sharon?
 18 A. She had Emiliano, Vince, Santos, and Thomas.
 19 Q. Ruby?
 20 A. She had Tommy and John Paul, and that was it.
 21 Q. Kathryn?
 22 A. She had me, Krisha.
 23 Q. That's your mom?
 24 A. Yes, that's my mother. Christopher Flores. And
 25 then she had two stepkids that she was raising.

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1 Q. Uh-huh.
 2 A. Ramona -- Ramona.
 3 Q. Say that, Ramon?
 4 A. Ramona.
 5 Q. Okay.
 6 A. And Kenneth.
 7 Q. And Kenneth. Okay. Gary?
 8 A. Gary had Vicky, and I think his son's name was
 9 Anthony.
 10 Q. And then Mike?
 11 A. He had Michael Frank. That's the only one he
 12 had.
 13 Q. Okay. I'm showing you what's marked as Defense
 14 39 and 40. Do you recognize these?
 15 A. Yes.
 16 Q. They fairly and accurately depict that house as
 17 it exists today?
 18 A. Yes.
 19 Q. Is this the 3113 North Houston?
 20 A. Yes, sir.
 21 MR. WESTFALL: Your Honor, we offer
 22 Defendant's 39 and 40.
 23 MR. STRAHAN: No objection.
 24 THE COURT: Admitted.
 25 (Defendant's Exhibit Nos. 39 - 40 admitted.)

1 Q. And Gary also. And did Gary have his kids at
 2 the time?
 3 A. Just his oldest daughter, Vicky.
 4 Q. Vicky?
 5 A. Vicky.
 6 Q. So I guess that makes five or six adults and at
 7 least five or six more kids?
 8 A. Yes, sir. It was quite a bit of kids in the
 9 house.
 10 Q. And this is the house that you stayed in?
 11 A. Yes, sir.
 12 Q. All right. This -- how were the sleeping
 13 arrangements in that house at the time?
 14 A. It --
 15 Q. Where did y'all sleep?
 16 A. On the bed in the -- well, they slept like in
 17 the beds in the same room with their moms or on the couch
 18 or, I mean, like wherever there was room.
 19 Q. Okay.
 20 A. Like the youngest ones, they slept in the room
 21 with their mom. And like the other ones will sleep, like
 22 if we spend the night, will sleep like in the living room
 23 or they had a extra room where the kids go hang -- you
 24 know, play and lay at in the back of the house.
 25 Q. And at the time there was also some adults there

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 1 Q. (BY MR. WESTFALL) Now I want to talk about when
 2 you were a little girl for a little bit. Okay?
 3 A. Okay.
 4 Q. Do you remember this house on Houston Street?
 5 A. Yes, sir.
 6 Q. Tell us about it. What did it look like?
 7 A. It was -- the way it looked in front, when you
 8 walked in the door, it was like the stairs, the living
 9 room. On the right side was my grandma's and grandpa's
 10 room. When you passed the living room, it was the
 11 kitchen. Then when you walked in the door, the upstairs,
 12 you walked upstairs. And it was two rooms on the side,
 13 and then in the back it was some rooms and the restroom.
 14 Q. And first of all, how many people are living in
 15 the house when you're there as a little girl?
 16 Which of the adults? There's Lizzie, Donna,
 17 Vicky, Francis, Cynthia. Which of these adults lived
 18 there at the time you were a little girl?
 19 A. It was Carolyn, Vicky, Gary, Cynthia. My mom
 20 had her house next door. So Francis was and Donna, just
 21 that I can remember.
 22 Q. So five or six adults. And how many of them had
 23 kids at the time? Donna had both of hers, right?
 24 A. Yes. Kathryn, my mom. Mona -- I mean Francis,
 25 Cynthia, and Vicky, and I think Gary too.

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 1 that would sniff paint?
 2 A. Yes, sir.
 3 Q. And who were they?
 4 A. Donna, Vicky, Francis and Carolyn, that I
 5 remember of.
 6 Q. And where would they -- where would they sniff
 7 the paint?
 8 A. They would sit on the front porch or like in the
 9 back yard. They would, I mean, they would just be right
 10 there while we would be running in and out of the house
 11 playing or going next door to where my mother lived back
 12 and forth. And they would just be on the front porch just
 13 in their own little world.
 14 Q. Right. Well, there came a time when you started
 15 sniffing paint?
 16 A. Yes, sir.
 17 Q. Can you tell us how you got started on that?
 18 A. I started when I was 13. I was right -- I was a
 19 runaway. I was hanging around with my cousins on my
 20 dad's side of the family, and they would -- they were a
 21 little bit older than me. And they were sniffing, and I
 22 just tried it and then I got -- I liked it and I started
 23 doing it.
 24 Q. And how long did you do it?
 25 A. I did it for a long period of time until like --

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1 until I lost my vision in 2003. I did it for a long
 2 period of time. I was in and out of it. Then I lost my
 3 vision in 2003, and I stayed clean for so long. And then
 4 I got back in it for like another six months. And I just
 5 quit, say, last year in July when I got like paralyzed.
 6 My potassium dropped real low to like 1.8, 1.8, and it
 7 paralyzed me. So I knew it was the inhalant, so I
 8 stopped. And my kids was like on the lifeline where they
 9 was fixing to get removed, so it was like either keep
 10 doing what I was doing or keep my kids, so I choose my
 11 kids over that and my life.

12 Q. All right.

13 A. So I haven't touched it since.

14 Q. Have you started getting your vision back?

15 A. Now that I haven't been -- since I been clean in
 16 drug -- it's getting a little bit better, but then it's
 17 times it don't get all the way. I mean, I'm still blurry
 18 for me.

19 Q. Right. How -- what did this look like out there
 20 on the porch? How many adults are out there sniffing
 21 paint?

22 A. It would be like quite a bit, about five or six.
 23 Some of them didn't. Some of them didn't do the
 24 sniffing. They were just standing around drinking. Some
 25 of them didn't do sniffing and some of them did, but it

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1 taste in it. That's like what we inhaled. But if they
 2 had like a nasty taste, we wouldn't do it unless it had
 3 like a sweet taste to it.

4 Q. What does the -- what does the paint do that
 5 makes it so addictive?

6 A. It just -- it's like a quick high. It's just
 7 like it -- really it makes you dumb, like slow. It's
 8 just like a real quick high.

9 Q. Uh-huh.

10 A. And it's like once the high goes away, it just
 11 makes you wanna keep, keep on doing it, because once you
 12 like remove it from inhaling it, not even a couple
 13 minutes, that high goes away. So that make you wanna
 14 keep doing it to keep the high there.

15 Q. And how often would they, would Donna, for
 16 instance, be out there on the porch inhaling the paint?

17 A. They -- they used to do it a lot.

18 Q. Of course, you were how old back then?

19 A. About 6, 7.

20 Q. Okay. So you weren't inhaling paint at that
 21 time?

22 A. No. Because we would find the inhalants on the
 23 side of the house by the tree, and we'll pick them up and
 24 we'll go throw them down the sewer or throw them away.
 25 And we would get in trouble for it. We'll get a whipping

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1 would just be the adults in the front porch and us kids
 2 were just running on the side of the house or in the back
 3 yard.

4 Q. How do you sniff paint?

5 A. There's -- you could -- there's certain kinds of
 6 ways. You could inhale it out of a can. You could put
 7 it on a rag or put it in a plastic bag and inhale it like
 8 that.

9 Q. How were they doing it out on the porch?

10 A. In a can.

11 Q. Tell us how you do that.

12 A. Huh?

13 Q. Tell us how you do that.

14 A. Just you spray it in a can. Once you spray it
 15 in a can, you just put it against your mouth and inhale
 16 it.

17 Q. And is there a particular type of paint that you
 18 use over others?

19 A. Back then when our aunts were using it, it used
 20 to be that crystal clear, if I'm not mistaken, it was the
 21 crystal clear they were doing.

22 Q. I guess some of the paints, inhalers don't like
 23 to inhale?

24 A. I guess like the inhalants that we did, from my
 25 experience, is the ones that had like, like that sweet

1 for it, because, for one, we touched it and we wasn't
 2 supposed to touch it; and then we threw their high away,
 3 so we would get a whipping for it, with my aunts and them
 4 or -- my mom, she didn't do no inhalants. She would whip
 5 us for touching it, but we were just throwing it away
 6 because it was just on the side of the house.

7 Q. I want to talk to you a little bit about the
 8 Soliz family. And I know that not all of these people
 9 lived here in town. So there was a -- there was kind of
 10 a block of the Soliz family that sort of hung together
 11 during these days, wasn't there?

12 A. Yes.

13 Q. And who were -- who were the adults in this
 14 block?

15 A. The one that stayed here after my grandpa passed
 16 away, the ones that stayed here was my Uncle Gary.

17 Q. Okay.

18 A. Carolyn, Vicky, my Aunt Ruby, Cynthia, Donna,
 19 and Kathy.

20 Q. Kathryn?

21 A. Yeah, Kathryn.

22 Q. Okay.

23 A. I think that's just about it.

24 Q. Sharon lived here too?

25 A. Oh, yes, Sharon.

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1	Q. But of those now -- and Francis also lived here?	1	where we all went, and then there's another one in the
2	A. Oh, yeah, Francis.	2	backside, on the other side.
3	Q. But of those now -- here is what I want to talk	3	Q. Was it a pretty large Catholic church on the
4	about. The part of the Soliz family that you were in,	4	front part of the park?
5	what was the weekly routine sort of like?	5	A. Yes. And then like on -- remember where we were
6	A. It would start on Wednesday. They sat around	6	standing, when you look like towards the back way, there
7	the house, just drank, planning what was gonna happen for	7	was another part on the other end.
8	that weekend. Then when Thursday came around, they were	8	Q. Okay.
9	in and out of the clubs, you know, what -- they would	9	A. So it's like two sets of park -- two sides of
10	take us -- take us to the park or come -- when we came	10	the park.
11	home from school, make sure our work was done, they fed	11	Q. And this road that goes all the way around the
12	us. They would go out from Thursday, Friday, Saturday	12	park, was it at the time common for people to cruise
13	and Sunday. Like Monday and Tuesday they stayed home	13	that?
14	and they rest. But they wasn't like -- they didn't pay	14	A. Yes, they used to like on Saturdays. Like when
15	attention really to us that much because that was their	15	we go on Saturdays, like mostly when everybody really
16	rest-up day, ready for that weekend to come. So, I mean,	16	piled up was on Saturdays.
17	they got up, they cooked and made sure we did our	17	Q. Right.
18	homework, but once Thursday hit, they were in and out of	18	A. And that's when we, the kids, was us playing and
19	the clubs and drinking and partying.	19	stuff, and the families were out there, you know, cooking
20	Q. And did y'all spend time at Marine Park during	20	or drinking or whatever. And the cars would cruise
21	those days?	21	around seeing who's there and just driving around. It's
22	A. Yes.	22	like a hang-out spot.
23	Q. Please describe for the Jury what Marine Park	23	Q. And during this time, you're what, 6 or 7 years
24	is.	24	old?
25	A. Marine Park, it's a park that we used to go to	25	A. 8 -- about 8 or 9, little bit older then.
	150		152
1	in the north side of Fort Worth. I mean, a lot of family	1	Q. Then of that -- before we get any further into
2	members went, like our families, friends and all of us,	2	that, that's what I was talking about. That group of
3	we'd all meet up there. We cook out. The kids, all of	3	people that hung together and did all of that, who were
4	us kids would go to the park and play. And then once	4	they?
5	the -- when it starts getting dark, say about 7 or 8,	5	A. It was Vicky.
6	when it starts getting dark, we'd all pack up and leave	6	Q. Okay.
7	and go home. And then they would get us, clean us up,	7	A. Kathryn, Carolyn, Sharon, Cynthia, Donna and
8	get us dressed. And whoever was babysitting, that's	8	Ruby and Gary.
9	where we went, to the babysitter's house, and while they	9	Q. And Gary?
10	were -- went to whoever's house and got stuff together so	10	A. Yes, sir.
11	they could get ready to go do their -- go do their	11	Q. So everyone I checked. Kathryn also?
12	partying.	12	A. Yes.
13	Q. Marine Park, Marine Park is kind of large?	13	Q. Okay. And the kids?
14	A. Yes, it's a big park.	14	A. Yes, sir.
15	Q. And as we look out over Marine Park, if we stand	15	Q. Showing you -- showing you Defendant's 41. Do
16	at the top of it and look down, are there streets all the	16	you recognize this?
17	way around it?	17	A. Yes.
18	A. Yes, sir. It's like it's a circle. You could	18	Q. Recognize all the people in this?
19	go around a circle and it's like right there. Because it	19	A. Yes.
20	has a pool there, too, and then it has the playground.	20	Q. And are these all folks you're related to?
21	Then when you walk through the park towards the back way,	21	A. Yes, sir.
22	there's, like, a basketball court. And then on the other	22	Q. Fairly and accurately depict them?
23	side it gots, like, a picnic, a bench, table, stuff like	23	A. Yes.
24	that. You could go in there and sit down. I think it	24	MR. WESTFALL: Your Honor, we move for
25	gots two play areas. One was up in front by that church	25	admission of Defendant's 41.

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	153	1 and 43. Do you recognize those people? 2 A. Yeah. That's Monica and Leticia. Then that's 3 my Uncle Gene and Donna and Mark. 4 Q. All right. Fairly and accurately depict them? 5 A. Yes.	155
1		MR. STRAHAN: I have no objection.	
2		THE COURT: Admitted.	
3		(Defendant's Exhibit No. 41 admitted.)	
4		MR. WESTFALL: Thank you, Your Honor.	
5		Q. (BY MR. WESTFALL) Can you see from there?	
6		A. Yes, sir.	
7		MR. WESTFALL: Can she step down, Your	
8		Honor?	
9		THE COURT: Yes.	
10		Q. Stand here. Okay. And please tell us who these	
11		people are. Let's just go straight across.	
12		A. Okay. This is my Aunt Victoria, the one that	
13		passed away. My Grandmother Vicky. Francis. And my	
14		mother, Kathryn. And Veronica and Mark. And I can't	
15		remember.	
16		Q. No one else in there. So this is your mom?	
17		A. Yes, sir.	
18		Q. And where was this taken, best you can guess?	
19		A. I think in the Butler Housing at Vicky's house,	
20		if I'm not mistaken.	
21		Q. Okay. And they're all holding bottles of booze?	
22		A. Uh-huh.	
23		Q. Okay. Go ahead and take your seat. Now, tell	
24		us about picture-taking in your family. Were there many	
25		pictures taken?	
	154		156
1		A. Yes.	
2		Q. And how was that?	
3		A. My mom, she loved to take pictures. My mom	
4		would take pictures of anything and everything she could	
5		from the beginning to the end. She, I mean, she was just	
6		a flasher.	
7		Q. And what kind of camera would she use, one of	
8		those insta-matic?	
9		A. She used to have one of them Polaroids, the one	
10		that comes right on out. She had one of those. Or	
11		she'll get the ones that you got to go get developed, the	
12		disposable ones.	
13		Q. But the little film would come out and over a	
14		couple of minutes kind of develop so you could see the	
15		picture?	
16		A. Yes, she had -- she took a lot of those like	
17		that.	
18		Q. Seems like though she was pretty much the only	
19		one that took pictures?	
20		A. Yeah. She always been that way keeping up with	
21		pictures.	
22		Q. Uh-huh. Okay. I would like to show you some.	
23		How is your mom doing?	
24		A. She's doing okay.	
25		Q. Show you what's been marked as Defendant's 42	
		So he was like a role model for them, the father figure	
		for them.	
		Q. Uh-huh.	
		A. I mean, well, actually for all of us, like all	
		his -- like us, we're not his biological nieces or	
		whatever, but he claims us. He helped all of us out a	
		lot, and up to this day, he still do.	
		Q. And how does he do that?	
		A. He's self-employed. He works on cars and he	
		sells them. And if we need help or we need money for	
		something and we don't have the money, he would take the	
		time out to take us to go pay what we got to pay or pick	
		up something if we need. Or if we need something like a	
		pack of meat or something, he would take us, and we don't	
		have to pay him back. Unless we borrow like a large	
		amount of money, we have to pay back, but if it's a	
		little bitty, we don't have to. He takes care of us like	
		if we're his own family.	
		MR. WESTFALL: Can y'all -- can you hear?	
		Okay. Do me a favor. I'm a little bit hard	
		of hearing, but speak just a little bit louder.	
		THE WITNESS: Okay.	
		Q. So on that subject here, we've got Lizzie,	
		Donna, Vicky, Francis, Cynthia, Carolyn, Rita, Mike, Gary,	
		Kathryn, Ruby and Sharon. And let's talk about the ones	

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1 that are in with -- the ones that sort of hung out
 2 together. Because Mike lives in Oklahoma City, right?

3 A. Yes, sir.

4 Q. And so not everyone lives in town; but of the
 5 ones that are here, which ones had jobs?

6 A. Um, Francis, Ruby, Sharon, sometimes Cynthia and
 7 Donna, and my mom before she got hurt.

8 Q. Okay. And Gene, you said though, provided for
 9 everybody?

10 A. Yes. He was self-employed. He -- I mean, he
 11 practically -- he's been around the family for some
 12 years, so he helped everybody out. If somebody needed
 13 help, he was always there. Some -- you know, you could
 14 call him and ask him for help and he was there to help
 15 you because, I mean, he had his own money by buying cars,
 16 fixing them and selling them. So everybody would rely,
 17 like turn to him and ask him for help. And he would help
 18 you until you did something wrong to him, and then he'll
 19 cut you off.

20 Q. And what would you do wrong to Gene to make him
 21 cut you off?

22 A. Like if you borrow a large amount of money and
 23 not pay him, then he won't help you no more. I mean, it
 24 would be kind of hard to get something out of him. But
 25 he was -- then again, he would still turn around and try

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1 But up to this day, I still don't come around my mom like
 2 that no more, I mean, I still keep my distance from her.

3 Q. And were you and your dad pretty close from the
 4 time you were born?

5 A. My real dad, yes. But we -- my mom also stopped
 6 us from going with him because he was a alcoholic. And
 7 that's too why I would run away, so I could go see my dad
 8 and be with my dad because we couldn't be around him
 9 because he was a alcoholic.

10 Q. So in these weekends that would start out at
 11 Marine Park, kind of take us through the routine. You
 12 would be there and it would be hanging out and the adults
 13 drank and the kids hang out?

14 A. We would be cooking out. Like we'll cook out,
 15 we'll eat, go play, and then we'll clean up our mess.
 16 And everybody, you know, we'll all load up and meet up
 17 at Cynthia's house on --

18 THE REPORTER: I'm sorry?

19 A. We'll meet up at Cynthia's house on Refugio
 20 Street. And then the grownups would discuss who the --
 21 who, what kids were going to what house and who is going
 22 to stay where. And they will split us all, you know,
 23 split us up to where we'll go to different kinds of
 24 places and stay and while they, you know, go out. Or
 25 some people would stay right there on Refugio. Some

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1 to help you.

2 Q. Uh-huh. And you mentioned that you were a
 3 runaway. How -- sort of what periods of time were you
 4 away from all the family?

5 A. From the -- actually from the age of 13 I really
 6 was never -- I would come and go, but I never would stay
 7 home because I didn't -- I didn't like it. I mean, I
 8 rather be with my dad and his family, because I felt like
 9 I got treated better over there with them than what I did
 10 with my own family. And I would stay gone, and there
 11 would be times my mom -- I think it went like almost two
 12 years and she didn't know nothing about me. She didn't
 13 even know where I was for two years. I was gone.

14 And it was because the help of my dad. He's
 15 the one who had me -- had me in a safe place here and
 16 there. And every time my mom would find out where I was,
 17 I would leave and go somewhere else because I didn't want
 18 to go home and go through that environment with them, so
 19 I would leave. And then if I get caught, I'll go --
 20 she'll leave me in juvenile for a couple days, then
 21 she'll go get me. And I'll stay home for a couple days,
 22 and then the argument with me and her or the family, and
 23 I just wait till everybody go to sleep and I'll sneak out
 24 the door or I'll jump out the window, and I'll stay gone
 25 again until they find me. But I would never stay home.

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1 people would go to the Marine Creek Apartments or to the
 2 Butler Housing. We'll get split up like that, and then
 3 they'll go out.

4 Q. So the kids would all -- they would stay at a
 5 place and the parents would go out and drink?

6 A. Yes. Well, some of the kids -- sometimes there
 7 will be like some adults around. Or like with in me, I
 8 was probably -- about that time I was already like 10 or
 9 11, so they would leave us, leave some of the kids with
 10 us because they would consider us old enough to babysit
 11 the youngest kids.

12 Q. Uh-huh.

13 A. And we would have to stay home and watch them
 14 while they were out partying until 2 or 3:00 in the
 15 morning.

16 Q. Okay. So the 10 and 11-year-olds watched all
 17 the younger ones?

18 A. Yes.

19 Q. And how often did this happen, this -- this
 20 drinking every weekend thing? Was it every weekend?

21 A. It was every weekend, all, it was every weekend
 22 when it -- every weekend.

23 Q. Okay. And at 3113 North Houston, is that where
 24 Mark was born?

25 A. Yes, yes, sir.

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1 Q. And how did a baby get taken care of in that 2 house? Do you remember at all?		1 them back. And I stayed clean for a long period of time, 2 for over four years. Then I started hanging out with the 3 wrong crowd again and started up again. 4 And then I had moved to Forrest Hill and 5 then I had some family members living with me. I put 6 them out. They reported me to CPS. They did a drug 7 test. I failed. They got removed again. And I did 8 everything I was supposed to do, and then I got them back 9 and I've been having them since.
11 Q. And when you're -- in your experience, when 12 you're sniffing paint, what's it like taking care of kids 13 in that condition? Can you do it?		10 Q. Well, back when you were little, now, it sounds 11 like in 3113 North Houston everyone was kind of doing the 12 same thing, sniffing paint and all that?
14 A. Yeah. Well, I guess on my part, I know I did 15 what I did but always like took the time out to stop and 16 check the kids, to make sure they had their diaper 17 changed, they, you know, it was time to eat. And then I 18 also had like my neighbors and friends around that was 19 helping me because they spoiled my kids. They spoiled 20 my kids, so they would help me. 21 Or when nobody was there, you know, I knew 22 this is a time I can't do this because I got to, you 23 know, pay attention to them. I would stop doing what 24 I'm doing so I could feed them, take them a bath and get 25 them dressed. Then after I did all that, once they were		13 A. Yes. 14 Q. Did they do it in front of the kids? 15 A. Yes, sir. They'd sit on the front porch and 16 just get high in front of us, I mean, like they didn't 17 care. The only time they will hide it was when my Uncle 18 Gary would come and they would try to hide it or throw 19 it to the side or something because he would come home 20 because he felt like he was the man of the house since 21 my grandpa passed away. And he'll come and he'll see 22 them and he'll start yelling and going at it with the 23 girls and get in their stuff and throwing it away. So 24 everybody knew when he got off work and came home, it 25 was time to put everything up because it was gonna be
1 playing or whatever, then that's when I would go get 2 high. And then I'm not gonna lie about it, yeah, I did 3 get high in front of them, but I also did what a mother 4 was supposed to do for the kids too. And it didn't 5 matter how high I was, I made sure I had their food done, 6 their Pampers was changed, they -- and I kept up with all 7 their doctor's appointments. Anything, everything I had 8 to do, I did. 9 Q. You said there was some threat they were going 10 to take your kids away?	162	164 1 a big ol' scene. 2 Q. When, I guess, he was working. This is already 3 in. Can you tell us who -- who are these people here? 4 A. The two little girls, that's Leticia Herrera and 5 Monica Herrera. 6 Q. Is this Gene here working on a car? 7 A. Yes. 8 Q. Now Leticia and Monica, are they Francis's? 9 A. Francis, Francis' kids. 10 Q. Daughters, yeah. There came a time when several 11 of y'all moved over to Butler, right? 12 A. Yes. 13 Q. And what is Butler? 14 A. It's the -- they call them -- it's the Butler 15 Housing. They call them The Projects, the East Side 16 Projects. 17 Q. Uh-huh. 18 A. Off of 287. And I mean that's how -- well, I 19 mean, that's how we call it by, The Projects. 20 Q. Okay. Showing you what's been marked as 21 Defendant's 44 and 45. Do you recognize this? 22 A. Yes. 23 Q. A picture of you there? 24 A. That's me holding Mark when he was a baby. 25 Q. Okay. And then Defendant's 45?

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1 A. Mark at my grandma's house on Houston Street.

2 MR. WESTFALL: Okay. Your Honor, we offer

3 Defendant's 44 and 45.

4 MR. STRAHAN: No objection.

5 THE COURT: Admitted.

6 (Defendant's Exhibit No. 44 - 45 admitted.)

7 Q. (BY MR. WESTFALL) Okay. This is you?

8 A. Yes, and Mark.

9 Q. And how old do you think you are there?

10 A. Probably about 7, if I'm not mistaken.

11 Q. Okay. And do you recognize any of those others?

12 A. The one back there with the hair down, that's

13 Mike.

14 Q. Okay.

15 A. And the girl in the back is Michelle.

16 Q. Michelle?

17 A. And the lady up on top, I think it's my Aunt

18 Ruby.

19 Q. Okay. And this would have been over on Houston
20 Street?

21 A. Yes.

22 Q. And this one here is on Houston Street, I guess,
23 as well?

24 A. Yes.

25 Q. And that's Mark?

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1 A. He was about 8, 9.

2 Q. Okay. Tell me what you all did for fun.

3 A. Well, we used to walk through the bridge-way.

4 Q. Show us what you're talking about.

5 (Sotto voce discussion.)

6 A. We used to walk across the bridge-way and jump
7 the railroad tracks to go downtown and get in the Water
8 Garden. Well, we didn't have a pool in The Projects,
9 so we would jump the railroad tracks to go to the Water
10 Garden to swim in the Water Gardens. And then after
11 that, we would go home until after we -- they said we
12 couldn't do the Water Gardens no more, so we found
13 something else to get our self into.

14 Since it was boring in The Projects, it
15 was nothing to do, we would go downtown and get money
16 from the meters, take the money from the meters and
17 things like that. Then one day we got caught by the
18 cops and we got picked up and we went to juvenile.
19 Then we got out, and we wasn't supposed to be in
20 downtown where the parking lot -- we couldn't be on
21 that area no more because if we got put back on, we
22 were gonna get in trouble. So we would have to find
23 another way to get downtown to go to the Water Gardens.
24 Because in the Water Gardens, like it had a wall and
25 the water came falling down, and we could stand against

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1 there, just put our body so we could get wet; we just
 2 couldn't get in the little water area. And that's what
 3 we would do for fun, and then go home, and then get in
 4 trouble because we were at the Water Gardens and we
 5 wasn't supposed to be there.

6 Then they would find out we were jumping the
 7 railroad tracks as they were -- the railroad tracks were
 8 going, the trains were going, we were jumping them. And
 9 we would get in trouble for that.

10 Q. So at this time are you living with your mom?

11 A. On 13th Street.

12 Q. On 13th Street. And then you said Sharon is
 13 also in --

14 A. She was living on Waters. Donna and Sharon was
 15 living next doors on Waters Street.

16 Q. Waters Street?

17 A. Uh-huh, before they moved to that Northwest
 18 Freeway up that way, they were living there.

19 Q. Right. And so Sharon and her family is there?

20 A. Yes, and --

21 Q. Kathy and her family is there?

22 A. Uh-huh.

23 Q. And Vicky and her family is there?

24 A. Yes.

25 Q. And then Donna is there?

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1 was always out in the street running the streets.

2 Q. And you said -- you said not really until the
 3 end. I mean, he took him to Mexico when he was like 5,
 4 right, or 4?

5 A. Yes. Then when he brought him back, he -- Mike
 6 was in his own little world. Either he was living with
 7 my mom or my Aunt Sharon.

8 Q. He didn't go back to live with Donna?

9 A. No. I mean, well, he did, but Donna was there
 10 with them, you know, bouncing here and there.

11 Q. Right.

12 A. So it was like --

13 Q. Well, tell us what you mean by that. Go ahead
 14 and have a seat. What do you mean, "Donna was here and
 15 there bouncing around"?

16 A. Like she would -- like she would live on 13th
 17 Street with -- where it used to be Vicky's house, or
 18 she'll go with Sharon. Or her and Gene, they would have
 19 their own place, like they would have a trailer home and
 20 they would live in a trailer home. Or Gene always made
 21 sure they had a place to stay, until they got split up.
 22 So then that's when she would come and live with the
 23 family, like on 13th Street and with Sharon and stuff
 24 after she lost her apartment on Waters Street.

25 Q. Right. And she lost her apartment on Waters

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1 A. Yes.

2 Q. Does Mike live with Donna at this time?

3 A. I think he was in Mexico, if I'm not mistaken.

4 Q. Now, Mike's father is different than Mark's
 5 father?

6 A. Yes, sir, they got two different dads.

7 Q. Okay. And did Mike's father live in the area?

8 A. No, he lived in the north side of Fort Worth
 9 down the street on Houston Street. It was like about
 10 four houses down from us on -- when we used to live on
 11 Houston Street.

12 Q. Okay. And so Mike's father, if you were living
 13 on Houston Street, that is kind of the area, right?

14 A. Yes.

15 Q. Houston Street. So did Mike's father actually
 16 have anything to do with him?

17 A. Not really, until the end when he seen like it
 18 was a bunch of commotion going on with our family, then
 19 he took him to Mexico to keep him from getting in trouble
 20 and messing up. And he went and stayed out there for
 21 about a year or two, if I'm not mistaken, then he came
 22 back, and then I don't -- from there I can't remember if
 23 he had anything to do with his dad or what.

24 Q. Right.

25 A. Because I was never -- I was never around. I

1 Street, that was after Gene left her?

2 A. Yes.

3 Q. And was there a time on Waters Street where she
 4 actually sold all the furniture?

5 A. Yes.

6 Q. And bought crack-cocaine?

7 A. Yes.

8 Q. And was Donna also prostituting herself?

9 A. She was.

10 Q. Was she also turning tricks to get drugs?

11 A. Yes.

12 Q. And was Cynthia doing that also?

13 A. Um, Cynthia wasn't -- she was in the north side
 14 of Fort Worth with her -- one of her daughter's father's.

15 Q. Uh-huh. And we'll talk about Cynthia's house in
 16 just a second. We'll go back to that. But while we're
 17 on Waters Street, let me show you a couple pictures.

18 Showing you what's been marked as
 19 Defendant's 48, 49, 50 and 51. Okay. Do you recognize
 20 that?

21 A. That's the one we lived in on east -- the -- the
 22 corner one. We lived on East 13th Street. That's where
 23 Vicky and my mom was living.

24 Q. And --

25 A. That's on 13th Street.

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	173		175
1	Q. Okay.	1	Q. Those are more close-ups of the apartments where
2	A. That's Waters.	2	everyone you just named lives. Now, these were taken
3	Q. Uh-huh. And do you see Donna's apartment in	3	pretty recently. What was -- what was the Butler Housing
4	there?	4	Project like in the late Eighties?
5	A. We didn't live in this first -- they didn't live	5	A. When we were growing up there, it was bad. I
6	in the first section. They lived in the second -- no,	6	mean, you see people out there selling drugs. We used to
7	no. Yeah, that was this first section.	7	get in trouble because we used to sneak off to the park.
8	Q. Okay. And then --	8	One day we were at the park, a shoot-out, a gang-related
9	A. It was like Donna's house and Sharon's	9	shoot-out happened from a gang from another side of town
10	apartment.	10	came to the -- came and was shot at the people at the
11	Q. All right. So this -- this all fairly and	11	park, and we happened to be there. We were hiding under
12	accurately depict the way it looks now at least?	12	the merry-go-rounds and the slides and stuff. I mean, it
13	A. Uh-huh.	13	was bad. People was getting killed, beat up, jumped, and
14	MR. WESTFALL: We offer Defendant's 48	14	it was just bad, drugs, you know.
15	through 51, Your Honor.	15	Q. Was there a vacant school at both ends of the
16	MR. STRAHAN: No objection.	16	Butler Housing Project?
17	THE COURT: Admitted.	17	A. Yes.
18	(Defendant's Exhibit Nos. 48 - 51 admitted.)	18	Q. Is that these two things?
19	MR. WESTFALL: Could I have her step down	19	A. Yes. One was up there on the 13th Street.
20	one more time, Your Honor?	20	Q. Okay. So this is on the same street that you
21	THE COURT: I just really have trouble	21	lived on?
22	hearing her. You can have her step down if you'll have	22	A. Yes, we lived right across the street from that
23	her speak up.	23	school.
24	MR. WESTFALL: I've got a way to show this	24	Q. And is there some special meaning to that school
25	up here that might be better.	25	up there? Did things happen in that school, that vacant
	174		176
1	THE COURT: I can read along, but I have	1	school?
2	trouble hearing what she's saying.	2	A. Well, we wasn't allowed to hang out or go up
3	Q. (BY MR. WESTFALL:) Can you see this?	3	there and play or just fool around up there because it
4	A. That's on 13th Street.	4	was well known as guys getting girls and taking them back
5	Q. Okay. And who lived on -- at 13 and Chambers?	5	there and raping them or little girls were getting pulled
6	A. It was Vicky and all five of her kids. It was	6	back there being molested. Things were -- or people were
7	Kathryn and all four -- all four of us. And my Uncle	7	out there like stripping cars, taking stolen cars and
8	Gary, sometimes he would be there and sometimes he	8	stuff. So we wasn't allowed to go to that school because
9	wouldn't.	9	it was always something going on or they were finding a
10	Q. And so -- all right. And this is another view	10	dead body up there, so.
11	of their apartment?	11	Q. How many times did stuff happen like that when
12	A. Of 13th Street.	12	you were living there when you were a girl?
13	Q. And which one did they live in?	13	A. I think, like, we heard about it like three
14	A. The end one, at the last apartment at the end.	14	times about a lady getting raped. But we were, you know,
15	Q. So 1306?	15	we were kind of young so they really wouldn't let us know
16	A. Yes.	16	too much. When something like that happened, they would
17	Q. And then who lived at Water and Luella?	17	keep us in the house so we wouldn't really know what was
18	A. It was the one -- there was two apartments, and	18	going on.
19	one was Donna, Gene, Mark, and Mike. And then in the	19	Q. Now, did you -- what was -- were you spending
20	next one was Sharon and all her kids, and my Uncle Gary	20	time with Mark during this time?
21	and his little girl Vicky and his wife Maria, or his girl	21	A. When he was about 9 or 10 years old, me and him
22	Maria.	22	used to run around with each other, like go downtown,
23	Q. Okay. And then are these, 1704 and 1702, are	23	which, I mean, I should have been a better role model
24	these more close --	24	for him, but I was young and dumb. And we used to go
25	A. On Waters Street.	25	downtown together and we used to rob the meters, and

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1 just do dumb things. Try to get -- like if we seen money
 2 in a car, we would try to get in the car and get it, till
 3 we got caught. Then we would go home and we would get
 4 our butt whipped. And my mom, she would go to the
 5 juvenile and tell them everything that I did and stuff,
 6 you know, try to lock me up. I mean, I mean, we did
 7 crazy things when we were growing up.

8 Q. Well, during this time, did Donna have a
 9 relationship with a woman named Becky?

10 A. Yes.

11 Q. And did Becky ever accompany you-all on these
 12 runs to go steal this money?

13 A. Yes, she used to go with us. And she had these
 14 wire cutters and they were -- she would cut the -- like
 15 it had a lock on there, and them wire cutters, it will
 16 cut the lock off. And we would get all the change that
 17 was in there or whatever money people would put in there
 18 to pay for their parking. We used to get the money and
 19 then split it all up.

20 Q. Okay. Split it up between whom?

21 A. Me, her and Donna and Mark.

22 Q. Okay. So Donna would actually take part in the
 23 proceeds of this theft?

24 A. Well, Becky would do it to -- I guess so she
 25 could be on good terms with Donna.

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1 Q. So who lived in this house with no furniture?
 2 A. It was Donna, Becky, Mark, me when I would run
 3 away, like just about us because really nobody would like
 4 to go over there but whoever was messing up because we
 5 knew if we went over there, we could get away with it.

6 Q. Why?

7 A. Well, because Donna would be doing her own
 8 thing, she would be high or be at the neighbor's house
 9 or something and we'll be there.

10 Q. Were you aware or did you know of Mark to
 11 disappear for periods of days?

12 A. I know he would leave and nobody knew where he
 13 was, but then when people did know where he was, he was
 14 either at Sharon's house or at one of the neighbor's
 15 house.

16 Q. And to your knowledge, did Donna sniff paint
 17 throughout this entire time?

18 A. She did when we lived on Waters Street because I
 19 used to sniff with her. I mean, I used to be the one
 20 coming and bringing the paint and we all would get high.
 21 I mean, she'll be downstairs in the living room and I'll
 22 be upstairs in the room. And then it would be time, I
 23 mean, we'll get up and we would leave, like the next
 24 morning we'll get up and we'll leave early before she
 25 even got up.

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1 Q. Okay. And Donna knew -- did she know where the
 2 money was coming from?

3 A. Half of the time she didn't, and then at the end
 4 she started finding out what we were doing. And then she
 5 told me if she found out that I had did it again, I had
 6 to leave.

7 Q. Uh-huh.

8 A. Because, well, for one, too, I was a runaway
 9 and I would go hide up there at her house until my mom
 10 started sending the cops over there. So she told me
 11 either I had to stop doing what I was doing or I had to
 12 leave. And then it was because I was bringing Mark along
 13 with me doing it, so it's either I had to stop or I had
 14 to leave. So I just left.

15 Q. There came a point, I mean, when Mike came back
 16 from Mexico, he actually chose not to live with Donna, is
 17 that --

18 A. Yes, he lived with my aunt. He was back and
 19 forth with my Aunt Sharon and my mom, with Kathryn.

20 Q. Uh-huh. And why didn't he want to live with
 21 Donna?

22 A. Because he didn't like the ways, what she was
 23 doing within the drugs and the prostituting and stuff.
 24 And -- and like, there was nothing there. It was like
 25 no furnitures, no nothing there.

1 Q. And when you say "we", you're talking about you
 2 and Mark?

3 A. No, me and whatever friend she would let me
 4 go -- like one of the girls I hang around with or --

5 Q. Right.

6 A. -- we'll get up and leave.

7 Q. So y'all would go sniff paint with Donna?

8 A. Uh-huh.

9 Q. Where would Mark be?

10 A. Sometimes he wouldn't be around. He'll be
 11 either at Sharon's or either at his friends or somewhere.

12 Q. And how often did you -- did you-all go and
 13 sniff paint with Donna?

14 A. About just whenever I didn't have nowhere to go
 15 and I needed somewhere to go, I would go over there with
 16 her because I knew if I go, I have somewhere to stay.

17 Q. Did she ever tell you, "No, I don't want to
 18 sniff paint with you"?

19 A. Yeah, there was times she wouldn't, but then
 20 when we leave and we, like, hide the stuff in the closet
 21 and we come back, you know, she would be high.

22 Q. Because she sniffed your paint?

23 A. Yes.

24 Q. And how old were you when this was going on?

25 A. I was about 13, 14.

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1	Q. During this same time in Butler, was there --	1	direction, so we'll have to jump off.
2	you mentioned something about gangs. Can you tell us	2	Q. So you're -- when you're 14, Mark is, what,
3	more about that?	3	about 9 or 10?
4	A. Well, when we lived there, when we lived there	4	A. Yeah.
5	it was like the Crips. It was like where we -- in The	5	Q. And at what point --
6	Projects at that time, it was the Crips, and then it	6	A. About 10.
7	would be like the Crips would be enemies with the Stop	7	Q. -- did he start, well, if he did, start sniffing
8	6 Projects in the east side of Fort Worth, and they were	8	paint with y'all?
9	called the Bloods. When the shooting and all that went	9	A. If I'm not mistaken, I think he was about 10.
10	on, that was when the Bloods came over to the Butler to	10	Q. Tell us about that. How did Mark start sniffing
11	get at the Crips. That was like mainly the main two	11	paint?
12	heavy gangs that was running through that was the Crips	12	A. Seeing us doing it, and I guess he tried it. At
13	and the Bloods.	13	the first he didn't like it, but then at the end once he
14	Q. Uh-huh. And was Mark -- did Mark see any of	14	got older, then he started doing it.
15	this with you like at the playground?	15	Q. So when you say "us", are you talking about you
16	A. No.	16	and Donna?
17	Q. Mark there?	17	A. No, me and my friends and my brothers.
18	A. No, he wasn't with us when all this was going	18	Q. Uh-huh. And did you hear of Mark sniffing paint
19	on.	19	with his mother?
20	Q. Okay. And how old were you when this is going	20	A. No.
21	on?	21	THE COURT: We're going to take a 15-minute
22	A. About the age of 14.	22	recess.
23	Q. Okay. So same age. Mark just didn't happen to	23	(Recess taken from 2:56 - 3:14 p.m.)
24	be there?	24	(Jury not present.)
25	A. No.	25	THE COURT: State ready to proceed?
	182		184
1	Q. Do you remember the Glass Key?	1	MR. STRAHAN: Yes, sir.
2	A. Yes.	2	THE COURT: Defense ready?
3	Q. And did you walk by the Glass Key?	3	MR. WESTFALL: Yes, Your Honor.
4	A. We used to walk by there just because we had to	4	THE COURT: Defendant present. Jury ready?
5	go to the store. Like when we cut through right there,	5	THE BAILIFF: Yes, sir.
6	the store was right there and the Glass Key was on the	6	THE COURT: Please bring the Jury in.
7	side of the store.	7	(Jury present.)
8	Q. And did you -- did you ever go out and ride the	8	THE COURT: You may be seated. Continue.
9	trains with Mark?	9	Q. (BY MR. WESTFALL) Okay. I'm showing you what's
10	A. Yes.	10	marked as Defendant's 52 through 60. Just look at those
11	Q. Tell us about that.	11	real fast.
12	A. We used to jump on the -- like when the trains	12	A. (Witness complied.)
13	would go slow, we would jump. We would grab the bars and	13	Q. Okay. Do you recognize the people and places in
14	jump on there and just ride it till we could cross, like	14	these pictures?
15	cross in the middle of the train to get to the other	15	A. Some of them.
16	side, and we'll jump off when they were going slow. If	16	Q. Okay. Do you recognize the people in this
17	they was going fast, we never took a chance in trying to	17	picture?
18	jump it. Only when they were going slow, then we'll jump	18	A. Yes.
19	it. Or sometimes the trains were just sitting there and	19	Q. Do you recognize the people in this picture?
20	we'll cross over like that.	20	A. Yes.
21	Q. And did you ever ride them up to the north side,	21	Q. Do you recognize the people in Defendant's 58?
22	up to Rock Island?	22	A. Yes.
23	A. It would take us halfway. It wouldn't take us	23	Q. Do you recognize the people in Defendant's 57?
24	all the way. It will only take us like half of the way,	24	A. Yes.
25	then we'll jump off because it would end up going another	25	Q. Do you recognize the people in Defendant's 56?

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1	A. Yes.	1	deal that they would do annually, come to The Projects
2	Q. 53 and 54, do you recognize the place that is in	2	like the angel tree and give everybody presents?
3	53 and 54?	3	A. Yes, we used to be signed up with that.
4	A. On Houston.	4	Q. And does this look like one of those things?
5	Q. Yeah, that's the house on Houston Street, right?	5	A. No, it look like just the cousins getting
6	A. Yes.	6	together to take a picture.
7	Q. And then this here, 52 and 55, is a house on	7	Q. Okay. With a lady that you don't know. This
8	23rd and Refugio. Do you recognize that house?	8	lady, these people here, who are they? Who is this?
9	A. Yes.	9	A. That's my cousin, Yolanda.
10	Q. Are all these accurate?	10	Q. Okay. And --
11	A. Yes.	11	A. That one, I can't recognize who that one is.
12	MR. WESTFALL: Your Honor, we'd offer	12	I still don't, Greg.
13	Defendant's 52 through 60.	13	Q. No?
14	MR. STRAHAN: I have no objection, Judge.	14	A. Santos.
15	THE COURT: Admitted.	15	Q. This is who?
16	(Defendant's Exhibit Nos. 52 - 60 admitted.)	16	A. That's Vince.
17	Q. (BY MR. WESTFALL) Now let's just take these.	17	Q. Vince?
18	Can you see that okay?	18	A. Yes.
19	A. Yes.	19	Q. And whose child is Vince?
20	Q. Now, who is this?	20	A. Sharon.
21	A. That's Mike and his dad.	21	Q. Okay. This is Mike again?
22	Q. Okay. And Mike's dad was also named Mike?	22	A. Mike, uh-huh.
23	A. Yes. We used to call him Uncle Mike.	23	Q. Who is this?
24	Q. And Uncle Mike actually looks like he had a	24	A. I -- okay. Wait. I can't tell you.
25	relationship with his son?	25	Q. Do you know this -- this person?
	186		188
1	A. Yes.	1	A. No.
2	Q. And did he take his son to Mexico for a period	2	Q. And her? Are you seeing these okay?
3	of years?	3	A. Yeah, but I can't -- I mean, I can't remember
4	A. Yes.	4	who they are.
5	Q. And another picture?	5	Q. Do you remember --
6	A. That's Mark. And I don't know who the little	6	A. That's -- one right here in the white T-shirt,
7	one is.	7	that's Emilio.
8	Q. Okay. This is Mark?	8	Q. Okay.
9	A. Yes, yes.	9	A. And that one, I can't tell you.
10	Q. Who is this?	10	Q. How about this?
11	A. Donna, Mark and Mike.	11	A. Those three boys are my brothers. The one in
12	Q. And Mike is the same one here, right?	12	the red shirt is my brother -- my stepbrother, Kenneth.
13	A. Yes.	13	And the one that's holding up the dice is my brother,
14	Q. What he looks like when he got bigger?	14	Christopher. And the other boy in the back is my
15	A. Yes.	15	brother, Vincent. And that's me.
16	Q. And this is Mark?	16	Q. Okay. How old do you think you would have been
17	A. Yes.	17	here?
18	Q. And this is Donna back then?	18	A. About 15.
19	A. Yes.	19	Q. All right. Now, this here is in evidence. Is
20	Q. Do you have any idea what this is?	20	that a picture of the house over on Houston Street? Do
21	A. Uh, some -- I mean, our cousins.	21	you see it okay?
22	Q. And just for the Jury's benefit, are you related	22	A. Yes.
23	to this lady?	23	Q. Now, did it look like this back then?
24	A. Um, I don't recall her. I don't think so.	24	A. No, it was different.
25	Q. Okay. Were you ever a part of one of -- of a	25	Q. What did it look like back then?

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1 A. It looked more, like, like a old house. It
 2 wasn't fixed up or painted up like that.

3 Q. Okay. The -- in fact, is the whole neighborhood
 4 quite a bit nicer than it was back in the Eighties?

5 A. Yes.

6 Q. And when you were talking about the porch
 7 earlier, is this where we're talking about here?

8 A. Yes, everybody used to be on each side --

9 Q. Uh-huh.

10 A. -- get -- you know, either drinking or getting
 11 high. And as kids, we -- like where the walkway is, we
 12 would be running through there or on the side of the
 13 house or in the front yard.

14 Q. And you said there was a side where they used to
 15 hide their cans. Was it on this side or the other side?

16 A. The other side.

17 Q. Can you see it here?

18 A. Where the tree -- where that tree is.

19 Q. Uh-huh.

20 A. At the bottom, they will hide it in the back of
 21 the tree. But with us kids running through there, we
 22 would find them.

23 Q. And throw them down the sewer?

24 A. The sewer. We'll walk, like, up to, like --
 25 like, if we're walking, there's a school down the

1 kind of like ragged out. It wasn't fixed up pretty like
 2 that.

3 Q. Right. And how many people lived in this house?
 4 A. It was Cynthia and all her kids, and Carolyn and
 5 her boyfriend and her -- what kids she had. And then
 6 just whoever will go over there and hang out, they would
 7 stay nights over there.

8 Q. And this house actually is kind of close to
 9 Marine Park, wasn't it?

10 A. Yes.

11 Q. So was this a house that everybody kind of
 12 congregated at after the Marine Park?

13 A. Yes, that's the house we -- everybody would get
 14 back to and hang out for a while till they decided where
 15 they were gonna send the kids to go.

16 Q. Uh-huh. And Cynthia, what did she do for money?

17 A. She, um, she had a boyfriend that worked, but
 18 when they got split up, she would bootleg, sell beer
 19 after hours when the stores wasn't selling them. They
 20 were selling beer and selling drugs out of the house.

21 Q. Okay. Tell me more about that, selling drugs
 22 out of the house. What were they selling?

23 A. My understanding, they were selling, um, powder
 24 cocaine and crack.

25 Q. And is this the house that everyone would get

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1 street. We will walk down, like, towards the school way,
 2 and there was a sewer line and we would throw them down
 3 in there.

4 Q. Like in a storm drain?

5 A. Yes.

6 Q. Now I'm showing you what's in evidence as
 7 Defendant's 52. What is this?

8 A. My Aunt Cynthia's house on Refugio and 23rd
 9 Street.

10 Q. So when you've been saying Refugio, it's this
 11 R-E-F-U-G-I-O?

12 A. Yes.

13 Q. And is it also much nicer now than it was back
 14 then?

15 A. Yes, it's much cleaned up more now.

16 Q. Is this the front of it?

17 A. Yes.

18 Q. Now --

19 A. It didn't look like that when we lived there.

20 Q. What's that?

21 A. It didn't look like that when we lived there.

22 Q. What did it look like?

23 A. It was more like -- how can I -- more like --
 24 how can I say that in a better way. Like hooded out.
 25 Like it wasn't all fixed up. All like -- it was, like,

1 together after Marine Park? I mean the kids and everyone
 2 would be there too?

3 A. Yes, we all would hang out there. Sometimes
 4 that's where, if we didn't go to the park, that's where
 5 we had our family get-togethers. Everybody got together
 6 at that house if we didn't make it to the park. That's
 7 where everybody would gather up at because that's when,
 8 like, the bootlegging was going on, the beer was selling
 9 and the drugs and stuff.

10 Q. And was there a -- was there a place in the
 11 house where the kids were not allowed to go?

12 A. In my Aunt Cynthia's room.

13 Q. Why? Why?

14 A. Because that was the room that the drugs were
 15 going on, they were doing the drugs, and that's where the
 16 drugs were hidden at in that room.

17 Q. Okay. And so what would the kids be doing?

18 A. We'll be either in the back yard or running
 19 around in the front yard playing or running in and out
 20 getting on their nerves, because they were getting high,
 21 so we would do anything and everything to make them mad
 22 so they could pay some attention to us. We'll get into
 23 things or just do dumb things so they could come out of
 24 the room because they would always be locked up in the
 25 room.

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1	Q. And all the kids would be outside the room?	1	front drinking and everything. Nobody knew what was
2	A. We'll be all running around either in the living	2	going on till all of us little kids, you know, all her
3	room or in the kitchen or the back yard or the front -- I	3	kids seen it, what happened, Mark seen it, me, my
4	mean front yard.	4	brothers and sisters, we seen when he stabbed her. He
5	Q. What would you be doing? You said dumb things.	5	stabbed her in her back, in her chest. We ran out there
6	Like what?	6	to get help. Then my Uncle Gary and my aunts and all
7	A. We'll be fighting with each other, or we'll be	7	them went in. My Aunt Cynthia tried to stop him. He
8	running in and out of the house slamming the doors, or	8	almost stabbed her, told her to get out the way or she
9	getting into the icebox and getting into things that we	9	was gonna be next. And he threw her in the corner.
10	wasn't 'posed to get into, or just be fighting or	10	By the time everybody tried to catch him,
11	spilling things on the floor, just so they could get out	11	time everybody came, she staggered from the kitchen
12	and give us some kind of attention. Or we'll bang on the	12	trying to go to the front door. And as she was walking,
13	doors and tell them we're hungry, we're ready to eat, but	13	blood started coming down her eyes, and then blood just
14	we had to wait till whenever they were ready to feed us.	14	gushed out of her mouth, and she fell forward and she
15	Or they would tell us go in there and make us a baloney	15	suffocated in her -- within her blood. We were trying,
16	sandwich or something, you know, a sandwich or something.	16	my aunts and everybody that was there, was trying to turn
17	Q. And would you ever get a response from them?	17	her over, but she had already got heavy. And we were
18	A. They would tell us to go in there and if	18	trying to help them and we couldn't because she was
19	whatever was easy for us to get, then we'll get it. But	19	already cold and heavy and she suffocated in her blood,
20	like us older ones, us older ones that was like 13, 14,	20	and she died.
21	12 and 11, we had to go in there and serve the little	21	Q. And Mark was there with you?
22	kids like sandwiches, pour them something to drink or	22	A. Do what?
23	make them a bowl of cereal. We had to feed them until	23	Q. Mark was there with you?
24	they were ready to come out the room and give us	24	A. Mark was there. He seen it, because that's when
25	something decent to eat.	25	he lost it because he was so close to her. She's the
	194		196
1	Q. And Mark's right there for all this, right?	1	only one that kept that family together. And it's like
2	A. Yes.	2	once she passed away, our family went downhill.
3	Q. You sound angry. Tell me what's going on.	3	Everybody started doing drugs bad. Everybody was going
4	A. It's just that house brings back memories.	4	out. Nobody paid attention to us. We were like we were
5	Q. Of what?	5	taking care of our self. Mark took it hard. He, I mean,
6	A. I mean, within the drugs and everything and then	6	he was close to her. He seen her get stabbed. He took
7	within my aunt getting killed in there.	7	it hard. I mean not just him but with all of us. We all
8	Q. Tell us about that.	8	took it hard because she's the one that kept all of us
9	A. It was one -- we were at the park. We all	9	holding up.
10	gathering at the park. All of us were there. My aunt	10	Q. Now, it sounds like -- well, you ended up living
11	and her boyfriend got into it because his ex-wife or girl	11	with someone who wasn't your mom, right?
12	was cruising through the park running her mouth to my	12	A. Yes.
13	aunt. A argument broke out. We left. We went back to	13	Q. And Mike ended up living away from Donna. Did
14	the house right there on Refugio. She was telling him	14	any of the other aunts want to take Mark?
15	she didn't wanna be with him and stuff. And, of course,	15	A. It's like nobody wanted to deal with him. It
16	little kids are gonna be nosy. They're gonna wanna know	16	was like if he was a problem child, nobody never took
17	what's going on. And every time somebody would argue, of	17	time out to try to take care of him. It's like, really
18	course, us little kids gonna be nosy and try to sneak	18	honest, it's like we raised our self.
19	around the corner and look and see what's going on. The	19	Like up to this day, my mom tells me, "The
20	argument, she told him she didn't wanna be with him no	20	streets raised you. The streets raised you." Okay. The
21	more. Well, he reached -- had her back against the	21	streets raised us because you didn't take the time out to
22	cabinet, against the sink, and he grabbed the knife and	22	take care of us. Y'all were too busy drinking and at the
23	he stabbed her in the back and in her chest.	23	dope house and leaving us here and there.
24	And then us little kids went running to the	24	Because we were older, we had to take care
25	front to call -- because everybody was standing up in the	25	of the younger ones. So it was like they didn't have no

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1	role model. We didn't have no role model. We had to	1 A. Out of the aunts?
2	raise our self. We had to learn the hard way for us to	2 Q. Yes, out of all these people that are listed.
3	live a better life now because we didn't have a parent to	3 A. Okay. It was Donna.
4	be there.	4 Q. Okay.
5	Q. Just out of curiosity, how many of these kids	5 A. Carolyn.
6	have been to prison?	6 Q. Carolyn?
7	A. My brother Christopher Flores, my brother	7 A. Francis.
8	Kenneth, my sister Mona, my cousin Freddy, Vicky's son.	8 Q. Okay.
9	Q. Uh-huh.	9 A. Um, Vicky.
10	A. And --	10 Q. Okay.
11	Q. Mark and Mike.	11 A. And I think that's about it.
12	A. Yeah, them two. Vince, Santos, and Emiliano.	12 Q. What about Sharon or Ruby or Kathryn or Gary or
13	Q. How about Tommy or John Paul?	13 Mike?
14	A. John Paul. That's about it, that I think of.	14 A. Okay, Sharon too. I'm sorry, yes, Sharon.
15	Q. None of Cynthia's kids?	15 Sharon was the one too.
16	A. No.	16 Q. Okay. What about Ruby?
17	Q. And none of Carolyn's?	17 A. Ruby, no.
18	A. No.	18 Q. No. And I'm just circling them so I can keep
19	Q. Carolyn was the youngest, right?	19 track of them. Okay?
20	A. Yes.	20 A. Okay. Ruby, no, Ruby was more as a drinker.
21	MR. WESTFALL: Your Honor, I'll pass the	21 Q. And Kathryn is your mom?
22	witness.	22 A. Yes.
23	CROSS-EXAMINATION	23 Q. And you already said she didn't do that kind of
24	BY MR. STRAHAN:	24 stuff?
25	Q. Are you doing okay?	25 A. Well, she --
	198	200
1	A. Yeah.	1 Q. She didn't sniff paint?
2	Q. Okay. Do you need a minute?	2 A. She didn't sniff paint, but she drank and did
3	A. No, I'm okay.	3 drugs.
4	Q. Okay. I'm a Prosecutor in this case. Did they	4 Q. Okay. All right. And what about Gary?
5	tell you I was going to be mean to you? Because I ain't.	5 A. He drank and did drugs.
6	I'm just telling you that I'm not. Do you need a tissue?	6 Q. Okay. I thought he was the one that would come
7	But I do have some questions for you because I get lost	7 home and be mad if anybody -- they would hide stuff from
8	easily and it's hard for me to keep up, okay, so I do	8 him.
9	have some questions.	9 A. Well, as far as the sniffing part, he didn't
10	These people have -- that are marked here	10 approve of the sniffing part, but he did drinking and
11	have gone to the pen; is that correct?	11 drugs.
12	A. Yes.	12 Q. So he was okay with drugs and drinking but not
13	Q. Is that for like thefts and drugs and stuff or?	13 the sniffing paint?
14	A. Two -- two of them is for murder.	14 A. Not the sniffing. He was very against the
15	Q. Okay.	15 sniffing.
16	A. One of them was for drugs, and two of them was	16 Q. Do you know what his problem with sniffing paint
17	for armed robbery. One of them was he was dating a girl	17 as opposed to the drugs was or do you know?
18	and they got split up, and the mother put -- he was older	18 A. I don't know.
19	than the girl. And after him and the girl got split up,	19 Q. Okay. And what about Mike?
20	he put rape charges on her -- on him. And the other ones	20 A. Uncle Mike, he didn't do, that I know of.
21	are just like for theft.	21 Q. Sure.
22	Q. Okay. So kind of a wide variety there. Tell me	22 A. I think he just did drinking, but he wasn't like
23	again, who were the people who were doing all the drug	23 all the time. It was a once-in-a-while drinker, not a
24	sniffing again -- or the -- I'm sorry, the paint	24 heavy thing.
25	sniffing, who was it that was doing that?	25 Q. Okay. And I thought your mom didn't want you to

1	go to your real dad's because he was an alcoholic.	201	1	Q. So June of last year you have been able to keep	203
2	A. Yes.		2	yourself clean?	
3	Q. So she would disapprove of his drinking?		3	A. Yes.	
4	A. Yes.		4	Q. Okay. And you, I guess, were very concerned	
5	Q. And she didn't think that was good for you?		5	that somebody was ultimately going to take your kids	
6	A. No.		6	away?	
7	Q. Yet you're telling us that she drank and did		7	A. Yes.	
8	drugs herself?		8	Q. And how many kids do you say you have?	
9	A. Yes.		9	A. I have four, two boys, two girls.	
10	Q. But she didn't think it was okay for him. I		10	Q. What are their ages?	
11	don't understand, I guess.		11	A. 17, 16.	
12	A. Well, because my dad would drive around with us.		12	Q. Oh, you told --	
13	Q. Uh-huh.		13	A. 17, 16, 14 and a 10-year-old.	
14	A. And my dad would go to the -- to the bar and		14	Q. A 10-year-old. And what is your living	
15	we'll be -- it's like -- it's weird because in Fort Worth		15	arrangement right now? Do they -- do they all live with	
16	on the main street, it's like it's a club way in the back		16	you now?	
17	and on the side is like some buildings, once you get on		17	A. Um, my two daughters live with me.	
18	the main street. And there was always a man in the --		18	Q. Okay.	
19	security guard in the door. And he would park up in		19	A. My oldest son, he's -- he's 17, fixing to be --	
20	there. While we would be in the car asleep, my dad would		20	Q. On his own?	
21	be in the bar drinking.		21	A. -- 18 in May. He done moved out of the house.	
22	Q. Okay.		22	Q. Okay.	
23	A. And when we would wake up, my dad would not be		23	A. My 16-year-old, he lives with my mother. He	
24	around. And when we started telling my mom, so she put a		24	don't live with me, well, because our problems with his	
25	stop. Then he would drink with us and he would go to the		25	attitude towards me. He's very disrespectful, tries to	
1	lake and, you know, he would be doing donuts. He would	202	1	put his hands on me.	204
2	be driving with us while he was drunk.		2	Q. Sure.	
3	Q. Uh-huh.		3	A. So he don't live with me. I only have my two	
4	A. And the difference with my mom and him, my mom		4	daughters with me.	
5	didn't drive with us when she was on drugs or drinking.		5	Q. Okay. And how are they doing?	
6	She left us at home and she was out on her own, you know,		6	A. They're doing fine. I mean, they -- they're	
7	they were out in the streets.		7	proud of me because I did a lot of whole turn around.	
8	Q. Okay. Okay.		8	I'm change -- you know, I changed. I mean, I do more	
9	A. So that's when she stopped us going with my dad,		9	activity things with them, you know, and I focus more on	
10	because I think, if I'm not mistaken, I think my dad had		10	them.	
11	got into a accident one time when he was drinking, so she		11	Q. Do they go to school?	
12	put a stop with us being with him.		12	A. Yes.	
13	Q. I see. So if I understand that, it would be		13	Q. And what kind of -- are they in, I guess, middle	
14	okay to do that stuff at home as long as you're not		14	school and high school or elementary school, high school?	
15	running the kids around?		15	A. One, the 10 years old, she's in fourth grade.	
16	A. Yes.		16	The 14-year-old is in seventh grade. And the	
17	Q. Okay. And, in fact, in your own life you sniffed		17	16-year-old, he's in ninth grade.	
18	paint around your own children; is that correct, or have?		18	Q. Okay. So you've got them all in school.	
19	A. Yes, yes.		19	They're all --	
20	Q. How long have you been clean from that?		20	A. They're all in school.	
21	A. I been clean since last year in July.		21	Q. Besides, I guess, his attitude problems, other	
22	Q. Okay.		22	than that, is he doing okay, your son?	
23	A. Well, I'm sorry.		23	A. No.	
24	Q. It's okay.		24	Q. Okay. He's got problems?	
25	A. It was June. It was in June. It was in June.		25	A. He's having -- not going to school and I'm	

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1 getting fined and trouble behind him not -- for him not
 2 going to school.

3 Q. Okay. And you -- I think you had stated you --
 4 when -- and I was trying to keep track of all this. You
 5 saw all this paint sniffing going on at that one house,
 6 correct?

7 A. Yes, sir.

8 Q. And then you ran away and also went to live with
 9 your dad early on?

10 A. Yes, sir.

11 Q. And I think that you had said you started
 12 sniffing paint after you left to go to your dad's, you're
 13 hanging out with some bad people?

14 A. I was hanging around with my cousins on my dad's
 15 side of family. I was -- that's how I started hanging
 16 around with them.

17 Q. So you saw all this, but you decided it was a
 18 good idea for you actually when you got out of there; is
 19 that right?

20 A. Yes.

21 Q. You left and had a whole different influence and
 22 then started doing it?

23 A. Yes.

24 Q. Okay. And you had told us when you were
 25 testifying that you wanted to get out of this drug and

1 Q. Sure.

2 A. And it just made me be a better and a stronger
 3 person and a better person for my kids.

4 Q. Would you agree that seeing some of this stuff
 5 can a lot of times tell you this is the way I don't want
 6 to be?

7 A. At times it did, but then it was like it ain't
 8 gonna hurt me. And then when I lost my vision, I should
 9 have learned my first time, you know, because God gave me
 10 a second chance to live because I was in ICU for a week.
 11 I was at the edge of life and death. I could anytime,
 12 you know, if I would have went to sleep I would have
 13 died. They had to keep me up 24 hours. And you would
 14 think I would learn my lesson the first time, but I
 15 didn't.

16 Q. You chose even after that to go back to that
 17 lifestyle for a while anyway, right?

18 A. Yes, because I started hanging around with the
 19 wrong crowd again and it was temptations. And then I
 20 started back again to finally the end when I lost my -- I
 21 got paralyzed with my potassium. I stayed in the
 22 hospital for almost two weeks. Then finally that's when
 23 I was like, I give up. God gave me a second chance. He
 24 gave me this life to live, to take care of my kids.
 25 Thank God, I lost my vision, but thank God I still got

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1 paint sniffing situation, correct? And then you leave
 2 and go with your dad and then you start doing it on your
 3 own?

4 A. And --

5 Q. Go ahead.

6 A. And it's like -- it's not no excuse or nothing,
 7 but it's like I was trying to fit in the crowd, make
 8 myself feel comfortable, hey, I can be big and bad and I
 9 can do this and I could do this and I could get away with
 10 it thinking --

11 Q. Right.

12 A. -- you know, but I mean, that's --

13 Q. You made a dumb choice, right?

14 A. Yes.

15 Q. And but it's a choice. I mean, you decided to
 16 do it and you knew better?

17 A. And it's like it's not an excuse and it's not no
 18 reason, but I feel like, I mean, I done changed and I'm a
 19 better person now. And I feel like in a way I'm kind of
 20 glad that I went through them consequences and the
 21 situation that I -- the trouble that I got in. That made
 22 me a better person now to make me strong now to be a
 23 clean person and to be able to raise my kids without me
 24 being 30, 40 years old still doing this and this and
 25 that, that the aunts are still doing.

1 good enough vision to help my kids. I'm -- still could
 2 be there to provide for my kids like feed them, clothe
 3 them, take care of them.

4 Q. Yeah.

5 A. I mean, it's hard to help them with their work,
 6 but I have a lot of support with my oldest daughter. She
 7 helps me out a lot.

8 Q. Okay. And -- okay. But ultimately even as a
 9 kid, you made that choice?

10 A. Yes.

11 Q. And I guess now you figured some things out; is
 12 that right? But you also made that choice as an adult on
 13 multiple occasions?

14 A. Yes.

15 Q. Even after you hurt yourself pretty bad and got
 16 in trouble. But it's always been a choice. You don't
 17 sit here and make excuses for it, do you?

18 A. No, I don't. I blame myself for everything.
 19 It's not nobody to blame but me.

20 Q. Okay. And that's a very adult attitude about
 21 that. You're doing good now, right?

22 A. I'm doing so much because, you know, I thank God
 23 my daughters, you know, yeah, I have problems with them,
 24 with my 14-year-old, her attitude, but she looks up to
 25 me. And I have to be a better role model for them. I

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1 don't want them like, hey, I should have seen what my
 2 family was doing. I shouldn't walk down that path, but I
 3 did. I don't want my daughters to grow up and be like me
 4 and run the streets or do drugs or do this. I want them
 5 to be able to finish school.

6 Q. Right. And, well, if you need to finish, go
 7 ahead. I just have another question for you.

8 A. So it was like, I guess now I done open my eyes
 9 about a lot of -- my daughters are my daughters and my
 10 sons are my sons too. And I thank God, you know, they
 11 respect me and they see the changes in me and they
 12 starting to respect me more and help me more and do
 13 things with me more.

14 Q. That's good. That's all good. Tell me, and so,
 15 okay, Carolyn -- I circled these. Carolyn was doing all
 16 this stuff. And it looks like Cynthia kind of stayed
 17 away from it; is that right?

18 A. Yes.

19 Q. Okay. And you -- Mike, I guess, really kind of
 20 didn't live in this area anyway?

21 A. No.

22 Q. Okay. And as far as the aunts go, Sharon was
 23 doing it, Donna was doing it, Vicky, Francis, correct?

24 A. Yes.

25 Q. Okay. So Carolyn, was she just as involved in

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1 A. Stephanie.
 2 Q. Stephanie did?
 3 A. Her daughter Stephanie.
 4 Q. Okay.
 5 A. She went to prison.

6 Q. Okay. She did. Okay. That's you think or do
 7 you know?

8 A. Yes, she -- I know.
 9 Q. That's one of one, two, three, four, five, six,
 10 seven kids, right?

11 A. Yes. She's the only one I forgot to mention.
 12 Q. And then Francis's kids did not go to the pen;
 13 is that right?

14 A. No.
 15 Q. And one out of, I guess, one, two, three, four,
 16 five of Vicky's. I mean, it's all kind of on the board.
 17 Let me ask you about the parents of all of these people,
 18 I guess would be your grandparents?

19 A. My aunts.
 20 Q. Well, I mean Donna's father and mother and
 21 Vicky's father and mother.

22 A. Oh, yes.
 23 Q. Whose that?
 24 A. Those are my grandparents.
 25 Q. Who are they?

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1 all this bad stuff as, say, Donna was?
 2 A. Yes.
 3 Q. Were they all kind of equally involved?
 4 A. Yes.
 5 Q. And Donna and Vicky and Francis and Carolyn, all
 6 equally involved, correct?
 7 A. Francis didn't, if my -- I mean, I'm not lying
 8 or nothing, but on my behalf, I don't think Francis did
 9 the drugs. I know she did the sniffing.

10 Q. Okay.

11 A. And as far as the drugs, I never known her as
 12 doing any hard drugs. I know drinking, but not no hard
 13 drugs on Francis.

14 Q. And I think you said Gary was not sniffing but
 15 he was into the drugs?

16 A. Yes.

17 Q. Okay. And none of Gary's kids went to the
 18 penitentiary, did they?

19 A. No.

20 Q. Okay. And none of Carolyn's kids went to the
 21 penitentiary, did they?

22 A. Yes.

23 Q. Okay.

24 A. Her daughters.

25 Q. None of those are marked.

1 A. Santos Soliz.
 2 Q. Right. Santos?
 3 A. Soliz.
 4 Q. Uh-huh.
 5 A. And Vicky Soliz.
 6 Q. Okay. And are they from the north side of Fort
 7 Worth also?

8 A. They -- yes. They lived in Oklahoma, then they
 9 moved down -- Oklahoma City. Then they moved here. And
 10 when my grandpa passed away, my grandma moved back to
 11 Oklahoma.

12 Q. What kind of work did your grandpa do while he
 13 was alive?

14 A. If I'm not mistaken, I think he was a welder.

15 Q. Okay. And he had a bunch of kids to raise,
 16 didn't he?

17 A. Yes.

18 Q. Was he a hardworking man?

19 A. Yes.

20 Q. Was he a good man?

21 A. Yes.

22 Q. And your grandmother Vicky, was she -- did she
 23 work or did she stay at home?

24 A. She was a home -- she was a wife at home that
 25 took care of the house things like the cooking, cleaning.

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1 Q. Okay. Was your grandparents, were they good,
 2 law-abiding citizens?
 3 A. Yes.
 4 Q. Hard workers?
 5 A. Yes.
 6 Q. You ever know them to do drugs?
 7 A. No.
 8 Q. Or sniff paint, any of that kind of stuff?
 9 A. My grandpa was a drinker. He was a drinker. My
 10 grandma, up to this day she'll drink one or two beers,
 11 that's it. But as far as her being a heavy drinker or in
 12 drugs, no.
 13 Q. Okay. Okay. Let me talk to you about some of
 14 these places because there's some things that I don't
 15 understand. What I would like to know is, I got confused
 16 on where you were living when, which one of these places,
 17 so if you could help me with that. When you were --
 18 let's say -- you are six years older than Mark; is that
 19 right?
 20 A. Yes.
 21 Q. Because you're 36 and he's 30, right?
 22 A. Yes.
 23 Q. Okay. So at the time you are 6 years of age,
 24 where are you living?
 25 A. We were living, if I'm not mistaken, we were

213 1 people we just talked about, where your mother also lived,
 2 right, at this time; is that correct?
 3 A. Yes.
 4 Q. But wasn't there a good deal of this time in
 5 those years that you were actually away living with your
 6 dad or running away or whatever?
 7 A. From the age of 13 was when I started running
 8 away.
 9 Q. Okay.
 10 A. And staying with my -- like go with my dad. And
 11 I would stay, I mean, I would stay gone for a long period
 12 of time. I would stay gone for three to six months. One
 13 time I stayed gone for two years, almost two years.
 14 Q. From when to when?
 15 A. To --
 16 Q. Just roughly.
 17 A. From say the age from 15 -- no, no, 14 to 16.
 18 Q. Okay. So --
 19 A. Just about.
 20 Q. At 13 you at least spent some time moving with
 21 your dad, right?
 22 A. Yes. Well, I was in and out of Fort Worth and
 23 Oklahoma and Denton and Lewisville.
 24 Q. Okay.
 25 A. I was just in and out everywhere trying to get

214 1 living in the north side of Fort Worth on Houston.
 2 Q. That's the house with the porch and all that or
 3 you were next --
 4 A. We were next doors. My mom and my dad had the
 5 house next doors.
 6 Q. Okay. And from 6 until what age did you live at
 7 Houston? I'm just trying to figure out.
 8 A. We lived on Houston till the age of, say, about
 9 11.
 10 Q. Okay. So you're 6 to 11, about five years
 11 there. Okay.
 12 A. Say from the -- from -- from the age -- well,
 13 say at the end of 11, from the end of 11 till the age of
 14 15 or 16, we lived at the Butler Housing.
 15 Q. Okay.
 16 A. Because after that, my stepdad had bought my mom
 17 a house in the east side of Fort Worth, and we been living
 18 there for over 20 years.
 19 Q. Okay. And so do you live there now with them or
 20 you say --
 21 A. My mother still lives there.
 22 Q. They live there for 20 years.
 23 A. Yes.
 24 Q. All right. And so at some point during this
 25 though, this is where Mark and his family and all these

216 1 away.
 2 Q. All over the place. And from 14 to 16 you said
 3 that you weren't around at all?
 4 A. Nobody really didn't know nothing about me
 5 because I was either gone, and then when I did get
 6 caught, I got locked up and got put in a home in Roanoke,
 7 in Lena Pope Home.
 8 Q. And you would leave and go away again?
 9 A. I ran from there.
 10 Q. Okay. And so it's, I guess, is it fair to say
 11 that at about the age of 13 or so you were not, including
 12 the time you were completely gone, from 13 on, you're not
 13 around these two places very often but some?
 14 A. I will be -- it's like I will come, but nobody
 15 knew when I was around. Because once somebody knew I
 16 was around, I already knew somebody was gonna run back
 17 and tell my mom, so I would hurry up and leave before
 18 she even found out. Because time she go look for me,
 19 I had already left.
 20 Q. Okay. And so the -- if this is correct,
 21 you're -- you maybe come around sometimes but you're not
 22 living there spending a lot of time after 13; is that
 23 fair to say?
 24 A. No.
 25 Q. Okay.

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1 A. No, I wasn't.
 2 Q. And so this is where Mark Soliz was living, so
 3 at the time of 13 on, you're kind of hit and miss, not
 4 there around him everyday anymore?
 5 A. Yes.
 6 Q. Okay. All right. So if you are 6 to 11 at
 7 Houston Street, Mark being six years younger than you,
 8 would be zero to 5. Does that make sense?
 9 A. Yes.
 10 Q. Okay. And then if you are 11 to 15 at the times
 11 you were in Butler, I guess, Mark would have been 6 or 5
 12 to 9, correct?
 13 A. Yes.
 14 Q. Okay. And that's when you're 11 to 15. I want
 15 to keep it straight. And so if you're gone two years
 16 after, so 11, 12 to 13, if you are gone at 13, then
 17 you're really not around Mark after he's 7, very much?
 18 A. Not much.
 19 Q. Okay.
 20 A. Because I know at the age of like at the end of
 21 9 and 10, that's when we used to go run the downtown and
 22 do the -- getting the money, jumping the tracks, jumping
 23 the railroad tracks and stuff.
 24 Q. Okay. But really after he's about 7 years old,
 25 you're not around very much?

1 A. 2030 Refugio.
 2 Q. Okay. And did Mark live in that house, Mark
 3 Soliz, or was that just an aunt's house?
 4 A. That was my aunt's house. I can't recall if
 5 they were living there too, but that's where we mostly
 6 all hung out at, at that house.
 7 Q. Just spent some time?
 8 A. Yes.
 9 Q. And this house has also been cleaned up; this
 10 looks a lot better now too?
 11 A. Yes, and that area is much cleaned up.
 12 Q. Okay. And then this house, which is 53, Defense
 13 Exhibit 53, that's the one with the porch and all that?
 14 A. Yes.
 15 Q. The Houston Street house; is that right?
 16 A. Yes, yes.
 17 Q. And this is also cleaned up and it's much nicer
 18 than it was before?
 19 A. Yes, it's much better.
 20 Q. Okay. So every single one of these places were
 21 not great 25 years ago, but now they're great now; they
 22 look great now?
 23 A. Yes.
 24 Q. So everything has gotten better in 25 years?
 25 A. Okay.

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1 A. Not --
 2 Q. That's when you were 13 and doing other things?
 3 A. I would be like in and out. I will come for,
 4 like, a day or two and then I will run off.
 5 Q. Okay. Okay. Now, this -- let me find this.
 6 Which -- this is Defendant's 51. Which place is this
 7 exactly?
 8 A. That's on Waters Street.
 9 Q. And that's in the Butler thing?
 10 A. The Butler Housing.
 11 Q. Okay. And again, this, I think you've already
 12 testified this looks much better now than it did then; is
 13 that right?
 14 A. It's much cleaned up better now.
 15 Q. Okay. And this is all Butler street -- or I'm
 16 sorry, Butler Project?
 17 A. Waters Street.
 18 Q. All these. And it all looks better now than it
 19 did 25 years ago?
 20 A. Yes.
 21 Q. Okay. And this, even the aerial views, this
 22 place is cleaned up compared to what it was 25 years ago?
 23 A. Yes, it's much better now.
 24 Q. And then this house is the one from which
 25 street?

1 Q. And this is a picture of your brothers and
 2 stepbrother and you?
 3 A. Yes.
 4 Q. And that would be you with 1980's hair, correct?
 5 A. Yes.
 6 Q. Okay. Not sure what that has to do with
 7 anything. These other pictures, this is a Christmas
 8 picture with a lot of your relatives, correct?
 9 A. Yes.
 10 Q. Do you know if Mark Soliz is in that picture,
 11 the kid in the blue shirt, or not?
 12 A. I can't recall.
 13 Q. Okay.
 14 A. I mean, I can't see it that good.
 15 Q. And one of those kids in the picture is Vince?
 16 A. Yes, the one that's sitting -- standing up there
 17 by Mike, the one at the end.
 18 Q. Okay.
 19 A. And the one at -- the yellow hat, that's Vince.
 20 Q. That's Vince. So standing behind him is Mike,
 21 which is Mark's brother, correct?
 22 A. Yes.
 23 Q. Okay. And so this picture would have actually
 24 been taken at Vince's house. There's a stocking with
 25 Vince's name on the back between the kids on the left.

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1 Do you see that?
 2 A. Oh, okay.
 3 Q. Is that right or wrong?
 4 A. It may be right.
 5 Q. Okay.
 6 A. I mean.
 7 Q. So they would have had a Christmas tree and
 8 gifts. And by the way, everyone in this picture, would
 9 you agree that everyone is clean, the kids?
 10 A. Yeah.
 11 Q. Everybody has got clean clothes on?
 12 A. Yes.
 13 Q. Everybody's smiling? Yes?
 14 A. Yes.
 15 Q. Okay. And everybody appears to be well fed?
 16 A. Yes.
 17 Q. Okay. And then this picture, which would be, I
 18 guess, according to the bottom of the picture, taken in
 19 November of 1982, correct?
 20 A. Yes.
 21 Q. Okay. And in that photograph, if Mark was born
 22 January 27th of 1982, he would have been about 10 months
 23 old, correct?
 24 A. Yes.
 25 Q. Okay. All right. And I think Counsel asked

1 Q. Okay. And did all these families get along with
 2 each other? I'm talking about specifically Donna's --
 3 Gene and her exhusband or whoever that is that was a
 4 father to Mike?
 5 A. Gene was -- Gene was always out in Springtown,
 6 Azle, working. So only time Gene would be around is,
 7 like, in the nighttime, like when it's time to get ready
 8 to eat, go to bed. And then like, say, about 4 or 5 in
 9 the morning, he was up and gone, working on cars, getting
 10 them ready to sell. So Gene was always in and out.
 11 Q. Okay. Was he around for like what's going on in
 12 this picture or do you know? You're just seeing the
 13 pictures.
 14 A. I can't tell you because I don't know.
 15 Q. Do you see, if you look close right there, this
 16 picture with Donna and Mark and Gene and everybody, do
 17 you see the shirt that Mike is wearing?
 18 A. Yes.
 19 Q. Mike wearing the exact same shirt in the picture
 20 with his real dad?
 21 A. Yes.
 22 Q. Okay. So, apparently, those pictures were taken
 23 pretty close together?
 24 A. I guess, I mean, I can't say yes or no because I
 25 really don't know.

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1 you, the family didn't take a whole lot of pictures,
 2 correct?
 3 A. Yes. It was only like certain people who would
 4 take a lot of pictures.
 5 Q. Okay. And that's -- at the bottom of this is
 6 Mike with the kind of light tan and brown sort of western
 7 shirt with a jacket, correct?
 8 A. Yes.
 9 Q. Okay. And this, again, was Gene?
 10 A. Yes.
 11 Q. And Gene was like a stepfather and a role model
 12 for everyone?
 13 A. Yes, at times.
 14 Q. Okay. Well, before, you said he was a role
 15 model, would do anything for you, correct?
 16 A. Well, yes.
 17 Q. Okay. And so he was a good person to get help
 18 from and to be a role model?
 19 A. Yes.
 20 Q. Okay. And do you know -- and, okay. So Mike
 21 had a different father than Mark did, correct?
 22 A. Yes.
 23 Q. Okay. And so let me show you this. Defendant's
 24 56 is a picture of Mike with his dad, correct?
 25 A. Yes.

1 Q. Mike was wearing the exact same shirt, wasn't
 2 he?
 3 A. Yes.
 4 Q. Okay. Is that around Thanksgiving where
 5 everybody would get together?
 6 A. I believe so.
 7 Q. Okay. Now, this picture, Defendant's 45, and
 8 who is this in this picture?
 9 A. That's Mark when we lived in my grandma's house
 10 on Houston Street.
 11 Q. Okay. All right. And Mark would be -- if this
 12 picture is correct, on the bottom it says 11/25 of 1982,
 13 correct?
 14 A. Yes..
 15 Q. If he was born in January 27th of 1982, that
 16 puts him at a little less than 10 months old. Would you
 17 agree with that?
 18 A. Yes.
 19 Q. Okay. So does he look clean?
 20 A. Yes.
 21 Q. Does he look healthy and happy and all that good
 22 stuff?
 23 A. Yes.
 24 Q. Okay. I mean, he looks fine, doesn't he?
 25 A. Yes.

	225	227
1	Q. Face is clear, there's no bruising, nothing	1 A. Yes.
2	wrong with him in this picture. Would you agree with	2 Q. Does he appear to be smiling?
3	that?	3 A. Yes.
4	A. Yes.	4 Q. Okay. And how old would he have been in this
5	Q. He's also shy -- just shy of 10 months old,	5 picture?
6	correct?	6 A. I can't tell you.
7	A. Yes.	7 Q. Okay. Looks like a pretty happy group photo,
8	Q. He's walking, isn't he?	8 would you agree?
9	A. I think so.	9 A. Yes.
10	Q. Nothing holding him up, is there? He's able to	10 Q. Okay. Do these bottles appear to be open, by
11	stand and walk on his own at 10 months old. Would you	11 the way, these liquor bottles, the way they're being
12	agree?	12 held? Or can you tell?
13	A. I guess, yeah.	13 A. I can't tell.
14	Q. I mean, it's in the picture. Not holding on to	14 Q. Okay. Now, do you remember, I guess, the night
15	anything, is he?	15 that your Aunt Vicky was killed, right, that's at that
16	A. No.	16 house on -- how do you say it?
17	Q. Okay. And so again, clean, looks like he's fed,	17 A. Refugio.
18	looks healthy?	18 Q. Refugio?
19	A. Yes.	19 A. Yes.
20	Q. 10 months old and able to walk. This picture,	20 Q. Okay. And you were in there that night,
21	which is Defendant's 44, is a picture of you holding	21 correct?
22	Mark; is that right?	22 A. Yes.
23	A. Yes.	23 Q. The kids were running around; seems to be a
24	Q. Okay. And you're smiling, you're happy?	24 whole lot of people around there?
25	A. Yes.	25 A. Yes.
	226	228
1	Q. Right?	1 Q. Okay. And you said Mark took that hard,
2	A. Yes.	2 correct?
3	Q. Okay. This picture, which would be Defendant's	3 A. Yes, yes.
4	41, and again, I couldn't see before, but can you just	4 Q. Okay. Would you agree with me then -- and he
5	tell me who these people are? Who is this person?	5 was close to her, correct?
6	A. That's my Aunt Vicky.	6 A. Yes. She's like the one that kept everybody up
7	Q. Okay. And then this one?	7 and helped with the kids and take -- like took care of
8	A. My grandma.	8 kids and make sure everything was good and everything.
9	Q. Oh, your grandma. Okay. And this one?	9 Q. Okay. And you had also said before that
10	A. My Aunt Francis.	10 somebody, some people in the family, I mean, it sounds
11	Q. Okay.	11 like kind of a village to raise some kids kind of group
12	A. And my mom Kathryn.	12 where there's different people doing different things for
13	Q. Okay. And that's Mark in the bottom of this	13 you. And by you, I mean all the kids running around. Is
14	picture, correct?	14 that fair to say?
15	A. Yes, and --	15 A. At some times.
16	Q. Go ahead.	16 Q. Well, you said that somebody was making sure
17	A. And Veronica.	17 y'all did your homework and stuff before and there was
18	Q. Little Veronica?	18 always a babysitter before they went out drinking or
19	A. Yes.	19 whatever.
20	Q. Is that a cousin?	20 A. Well, I mean, yeah, they did, but it was like
21	A. That's Vicky's daughter, the youngest.	21 minors, you know, like within us 13-year-olds, 12 years
22	Q. Okay. And so Mark in the bottom of this	22 old, you know, we were the ones helping each other. And
23	picture, and does he appear to be wearing clean clothes?	23 they wouldn't overlook or nothing until the morning when
24	A. Yes.	24 it was time to go or sometimes they wouldn't even get
25	Q. Does he appear to be healthy?	25 overlooked at times.

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1 Q. And you also said, I think, that if you
 2 touched -- when you were at the Houston house, if you
 3 touched their cans, you got whipped. Those were your
 4 words, correct?

5 A. Yes.

6 Q. What of those adults would whip y'all for
 7 touching their cans?

8 A. For throwing their high away.

9 Q. Not why, but which ones. Who would do that?

10 A. Oh, well, like my Aunt Carolyn or Donna, they
 11 would get mad because we would throw their high away.
 12 Then I would get a whipping from my mother because, for
 13 one, I shouldn't have been touching it.

14 Q. Right. And I think you also said that whenever
 15 you started doing this running around, I guess, in the
 16 Butler Project area with Mark, y'all were kind of having
 17 fun, jumping some trains and doing stuff like that; is
 18 that correct?

19 A. Yes.

20 Q. And even before that, this, you know, Marine
 21 Park and stuff, y'all were having barbecues and having fun
 22 out there, were you not?

23 A. Yes.

24 Q. Okay. And this whole gang thing that you saw,
 25 Mark didn't even see, did he?

1 stuff.

2 Q. Okay. Point is, if you touched the paint stuff
 3 at the old house, you might get a butt whipping, correct?

4 A. Yes.

5 Q. Donna was not happy if you were running around
 6 and as -- just as a kid yourself and getting Mark in any
 7 trouble. She didn't want that.

8 A. At times. Sometimes Donna wasn't even all
 9 there. She was all high on crack or sniffing her own
 10 self, so half of the time she didn't even know what Mark
 11 was doing.

12 Q. I understand, but when she did, she would tell
 13 you, you're going to have to leave if you get him in
 14 trouble.

15 A. When she had a straight mind, but it was every
 16 once in a while when she had a straight mind.

17 Q. Because it's bad for a mother to use any kind of
 18 drugs around their kids, right?

19 A. Yes.

20 Q. Okay. And this thing that happened with your
 21 aunt, this stabbing, who was the Miguel guy that did
 22 that?

23 A. It was her boyfriend.

24 Q. Okay. And how many people do you think were in
 25 and around the house when that happened?

230

232

1 A. No.

2 Q. Okay. And Donna in the very beginning was also
 3 going to tell you that if you get Mark into trouble, you
 4 would have to leave, correct?

5 A. Yes, but then --

6 Q. Go ahead.

7 A. There would be times she wouldn't say nothing,
 8 you know. She would just tell him she was gonna bust his
 9 butt, but we would be right out doing the same thing
 10 again.

11 Q. I understand. But she was trying to keep him
 12 from getting into trouble and also from you to be a bad
 13 influence?

14 A. Yes.

15 Q. And that school where somebody had allegedly
 16 been raped or y'all had heard that, y'all were given
 17 strict orders to stay away from that school, correct?

18 A. Yes.

19 Q. And you did, didn't you?

20 A. No.

21 Q. I thought you just said you didn't go in there
 22 because people got raped.

23 A. I wouldn't, but the other kids would go up
 24 there. Like the boys and stuff, they would be back there
 25 riding their bikes or whatever, back there playing and

1 A. It was me, my Aunt Cynthia, my Uncle Gary,
 2 Carolyn, my mom, Donna, and say about -- my Aunt Vic --
 3 all of my Aunt Vicky's kids, all of my mom's, Katherine's
 4 kids, Mark, and Cynthia's kids were there, that I
 5 remember of.

6 Q. So there was a ton of people there, correct?

7 A. Yes. And my Aunt Francis's kids were there too.

8 Q. Okay. So a lot of people there. And I guess
 9 Vicky was kind of the -- you said the glue that held
 10 everyone together and sort of took care of everyone?

11 A. Yes.

12 Q. And was she also one -- she was also one of the
 13 paint sniffers in all this too; is that correct?

14 A. Yes, she was.

15 Q. She was helpful with the kids?

16 A. Yes.

17 Q. And it was hard on Mark?

18 A. Yes.

19 Q. Do you think more than anybody else then, Mark
 20 Soliz would understand what it's like to have a loved one
 21 murdered?

22 A. I mean, I can't answer for him on that, but
 23 maybe.

24 Q. He saw his aunt die and it was hard on him?

25 A. Yes.

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1 Q. So you don't know that he would understand what 2 it would be like to have your close family member killed? 3 A. I mean, yeah, he -- I can't answer for him. He 4 should understand, but. 5 Q. Sure. Okay. 6 A. I mean, I can't answer for him on that. 7 MR. STRAHAN: Okay. Thank you. I'll pass 8 the witness.		1 Q. Oh, three families? 2 A. Lived up in there. 3 Q. And then what happened when she died? Who took 4 care of the kids? 5 A. My mom took over the house. My mom had her kids 6 for a quite -- you know, for a while. Then my Aunt 7 Sharon came and removed them from my mom, and she end 8 up getting custody over the girls. And my mom kept the 9 apartment. 10 Q. So it's been said now that Mark was born in 11 1982. And when were you born, what year? 12 A. 1976. 13 Q. '76. So you're six years older than Mark? 14 A. Yes. 15 Q. Roughly. So when Mark is born, you're 6. So 16 when you're 13, Mark is 7? 17 A. Yes. 18 Q. How old do you think you are there? I guess 19 you would be -- if he was around 10 months, you would 20 be about 7? 21 A. Yes. 22 Q. Or 8. What is the part of this picture we don't 23 see? You've got a smile. He looks like a clueless baby. 24 What is going on in your house at the time? 25 A. I can't tell you because I don't remember.
1 the sisters fight, she got in the middle of it and made 2 sure they worked it out or whatever. It just something 3 about her, she's the one who had everybody together. And 4 once she passed away, it's like everybody fell downhill. 5 It's like you had a group of aunts on this side, you had 6 another group of aunts on this side, you had the aunts 7 and uncles on this side, or you had the ones that didn't 8 bother with us. Just everybody started splitting up and 9 not talking with each other, fighting with each other. 10 Just like when she passed away, everything just went 11 downhill. 12 Q. And she was -- she was the only one that was 13 nice to Mark? 14 A. She was in -- I can't guarantee you who else was 15 because, I mean, I was young and I was out running and 16 everything, but I know she's the one who paid a lot of 17 attention to a lot of us kids. 18 Q. Okay. When Vicky was killed, she lived on 19 Luella Street in The Projects along with your family, 20 right? 21 A. 13th Street and Chambers at that corner house. 22 Q. How many of y'all were in that house? 23 A. Say about three of us. 24 Q. Three? 25 A. Three families.	234	1 Q. Where did you go to school? 2 A. I went to -- I traveled around. I went to a lot 3 of different kinds of schools. 4 Q. You did what? 5 A. I traveled around and went to different kinds 6 of schools. I was -- like, elementary I went to 7 Washington Heights and Kirkpatrick Elementary, then I 8 went to Kirkpatrick Middle School, then I went to 9 Stripling Middle School, then I went to Arlington 10 Heights, and then to North Side High School. 11 Q. And where did Mark go to school? Were you aware 12 of him going to school? 13 A. Yes, but I can't remember what school it was 14 that they were going to with the elementary, with 15 washing -- I mean from The Projects. I can't think of 16 that name of that elementary school that they went to 17 when they were in The Projects. 18 Q. In The Projects. How many times did you go over 19 there and say, "Hey, Mark, let's hang out", and he said, 20 "Ah, got homework to do"?
	236	21 A. None. 22 Q. How many times did you hear his mom from the 23 other room say "You can't go out and sniff paint till 24 you've done your homework"?
	25	25 A. None, because she was all either locked up in

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1 the room getting high her own self or at somebody else's
 2 house getting high. And we would just get up and go. Or
 3 we find they -- when we leave, the little kids, well,
 4 like Mark will follow us. And we'll try to get rid of
 5 him, but he would stick with us, so we'd just bring him
 6 right along with us because he was smaller and we were
 7 thinking, well, he's littler, he'll be easier to use to
 8 get in to things.

9 Q. What do you mean?

10 A. Like not get in to things. Like within the
 11 cars, he was little, you know, his hands were smaller
 12 than us, he would be able to reach over and try to
 13 unlock it or however.

14 Q. When you say "we", who are you talking about?

15 A. Well, within me and Becky. And Mark will go.
 16 Like Mark was the easy one to -- we could influence to
 17 help us. As long as he was getting a little bit of chump
 18 change or like 5 or 10 dollars, he would go and help; or
 19 something for us to eat on, because when we'd leave
 20 without 'em, there was never no food in the house. So
 21 whatever little money we gathered up, we were downtown
 22 at the -- that Sundance or something like that, little
 23 restaurant on the corner. We used to go down there and
 24 eat or go to the Tandy Center and find somewhere to go
 25 eat and then go home.

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1 stepdad was there, did a lot for me, too. I mean, he
 2 took me in as if I was his own.

3 Q. Your stepdad took you in?

4 A. Yeah, me and my brothers. He took care of us
 5 like if we was his own kids.

6 Q. And how did he die?

7 A. He died of cirrhoses with liver, and he was
 8 hurt. He was in a nursing home. They left him in the
 9 whirlpool. Like when he -- he was paralyzed and he was
 10 in the whirlpool take -- I guess they were cleaning him.
 11 They left him in there too long, and it burned his skin
 12 up.

13 Q. Well, there was an incident that caused him to
 14 become paralyzed. What was that?

15 A. Um, my aunt and her girlfriend, Donna and Becky,
 16 they were getting high, and at that period of time, my
 17 mom was right along with them, but she had stopped for a
 18 minute because I was always turning her in. When I would
 19 run away and when the cops would find me, they pick me
 20 up, I would snitch on my mom and my dad -- my stepdad,
 21 that they were, you know, smoking crack and stuff.

22 And, well, then they stopped, but my Aunt
 23 Donna and Becky and them, they kept on. And they owed
 24 the dope man some money. And he knocked on the door
 25 looking for them, and they told them that they wasn't

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1 Q. And Becky, this is Donna's significant other at
 2 the time?

3 A. Yes.

4 Q. So your -- this is on North Houston Street?

5 A. Yes, if I recall, yes.

6 Q. Okay. So these -- this would have been about
 7 the age when you were walking in and out of the adults
 8 that were sniffing paint?

9 A. Yes, you know, we would walk through there.

10 Plus, we lived next door from my grandma's house, my mom
 11 and my step -- well, my real dad. After they split up,
 12 it was my mom and my stepdad. So we'll be like from my
 13 grandma's house to our house next doors.

14 Q. You said earlier that your dad, your dad was
 15 kind of involved with you when you were little; is that
 16 true?

17 A. Yes.

18 Q. Do you know -- you knew your dad?

19 A. Yes. Up to this day he's still in my life.

20 Q. You ever meet Mark's real dad?

21 A. No.

22 Q. Closest thing he had, I guess, was Gene?

23 A. Yes.

24 Q. And then --

25 A. And my stepdad, the one that passed away. My

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1 there. He kicked the door in, and he attacked my mom
 2 and my dad. He -- he choked her. He raped her. He
 3 sliced her wrist, and he tried to cut her down there in
 4 her middle part. My stepdad caught the knife, and it cut
 5 my stepdad's hands. He stabbed my stepdad. My stepdad
 6 was already in crutches. He kicked him in his legs,
 7 messed up his legs. And he beat my mom real bad. Her
 8 face was messed up.

9 And they didn't find them until the next --
 10 they didn't find my mom and my dad till the next day.
 11 My stepdad came out of the -- he woke up. He was
 12 unconscious. He woke up. He always carried a gun for
 13 protection, and they were looking for the gun but they
 14 didn't find it. My stepdad got -- started shooting out
 15 the window, shooting through the windows. Finally, the
 16 neighbors next door would -- this lady, we used to call
 17 her grandma, her sons heard. They went and they found
 18 them. My mom was bleeding to death. She bled. She had
 19 a rope around her neck. And my stepdad was laying there.

20 Q. And this was over a drug debt that Donna owed?

21 A. Well, it was Donna and Becky.

22 Q. They just -- they came to your house instead of
 23 hers?

24 A. Well, they thought my mom and them were lying
 25 about the girls being there.

1	Q. Uh-huh.	241	1	A. They stayed there till the next morning.	243
2	A. So they thought my mom was lying and hiding, you		2	Q. Okay. So nobody was there to help them out or	
3	know, trying to cover up for my -- for them. And then		3	call the police or anything?	
4	they were trying to get money out of my mom and my		4	A. Till early that morning. If I'm not mistaken,	
5	stepdad to pay for it, you know, pay whatever debt they		5	it was about 7 or 8:00 in the morning when the neighbor	
6	owed, and they wouldn't. So they took it out on my mom		6	heard my dad -- my stepdad. You know, he finally got all	
7	and them, well, my mom and my stepdad.		7	woke up. He was yelling, screaming. He started shooting	
8	Q. When -- when Vicky was killed, do you remember		8	out the window. They heard gunshots. That's when they	
9	the year?		9	kicked the door in and they found him in the room hurt.	
10	A. No.		10	Q. And they both lived through that incident,	
11	MR. WESTFALL: May I approach, Your Honor?		11	correct, your mom and your stepdad?	
12	THE COURT: Yes, sir.		12	A. They lived through it.	
13	Q. I want to show you something, just to refresh		13	Q. And as you sit here today, how many years ago	
14	your memory about it. Okay. Does that refresh your		14	was that?	
15	memory? Can you read it?		15	A. I can't even recall.	
16	A. I can't even see it.		16	Q. Okay. You weren't there but you heard about it	
17	Q. It says June 25th, 1989.		17	obviously?	
18	A. Okay.		18	A. I didn't find out about it, say, about a	
19	Q. Okay. So in June of 1989, is that --		19	week-and-a-half later is when I found out about --	
20	A. Yes.		20	because I had been just -- my aunt seen me in the	
21	Q. So in June of 1989, Mark is 7 and you're 13.		21	streets, and they asked me did I hear what happened. And	
22	Kids always seem to smile, don't they?		22	I was like, what are y'all talking about. And when they	
23	A. When it's time to take pictures, we would be --		23	told me, I went to the hospital and I seen my mom just	
24	when we were young, you know, we were happy to take		24	laying there, face all -- eyes gushed out red, I mean,	
25	pictures. So every time there was a camera flashing,		25	her face was busted up, and choke -- I mean her arms were	
1	we were ready to smile and try to fit up in the picture	242	1	cut up, her neck. I mean, I didn't find out till almost	244
2	so we could get a picture taken.		2	about a week later when I found out about it.	
3	Q. The truth is, y'all kind of lived in a jungle		3	Q. All right. And your mom and stepdad hadn't done	
4	there, didn't you, Butler? That thing you just talked		4	anything to these people, correct?	
5	about, didn't that happen in Butler?		5	A. No.	
6	A. Yes, on 13th Street.		6	Q. Okay. So violence at the hand -- violence	
7	MR. WESTFALL: Pass the witness, Your Honor.		7	against someone innocent at the hands of somebody else is	
8	RECORD-EXAMINATION		8	a terrible thing, isn't it?	
9	BY MR. STRAHAN:		9	A. Yes.	
10	Q. Mark wasn't anywhere around for this thing that		10	Q. Yeah. And they lived, correct?	
11	happened to your mom and your stepdad, and neither were		11	A. Yes.	
12	you, for that matter, right, you weren't home?		12	Q. And you are traumatized 20 something years	
13	A. No. I was a runaway.		13	later, and you weren't even there. But it's traumatic,	
14	Q. Okay. This is one of those bad things that		14	isn't it?	
15	happened, but it really didn't have -- that part didn't		15	A. Yes.	
16	have anything to do with Mark; is that right? He wasn't		16	Q. And do you know, by the way, who Ruben Martinez	
17	there, was he?		17	is or Nancy Weatherly?	
18	A. I mean, I'm not gonna say by "he say, she say",		18	A. No.	
19	whatever, but my understanding a little bit before that		19	MR. STRAHAN: I'll pass the witness.	
20	had happened, my aunt had -- well, his mother had walked		20	MR. WESTFALL: I have nothing further, Your	
21	him to Sharon, to my Aunt Sharon's house. That's my		21	Honor.	
22	understanding, but like I say, you can't go by "he say,		22	THE COURT: May the witness be excused?	
23	she say".		23	MR. WESTFALL: She may.	
24	Q. Didn't your mom and your stepdad lay there for a		24	MR. STRAHAN: Yes, sir. Thank you.	
25	long time until they woke up?		25	THE COURT: You may be excused.	

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1	MR. WESTFALL: May she be finally released,	1 A. Yes, sir.
2	Your Honor?	2 Q. Recognize anyone in that picture?
3	THE COURT: Yes.	3 A. Yes, sir.
4	(Witness excused.)	4 Q. Who are they?
5	MR. WESTFALL: Your Honor, call Leticia	5 A. Gene and Mike, Monica and me.
6	Herrera.	6 Q. Gene and who?
7	THE COURT: Were you sworn in the other day?	7 A. Gene, Mike, which we call -- yes, sir. And
8	THE WITNESS: Yes.	8 Mike, which we call Bubbles. And, right. And then
9	THE COURT: Please have a seat. Okay.	9 Monica is in the black or the blue. And I'm in the red.
10	MR. WESTFALL: Thank you, Your Honor.	10 Q. And that's you?
11	LETICIA HERRERA,	11 A. Yes, sir.
12	Having been previously duly sworn, testified as follows:	12 Q. And do you know who this is bending in the car
13	DIRECT EXAMINATION	here?
14	BY MR. WESTFALL:	14 A. You know, I don't recognize who that is.
15	Q. Ms. Herrera, would you please say your name for	15 Q. Okay. Well, I want to talk to you a little bit
16	the record and for the Jury.	16 about what the family was like back then.
17	A. Leticia Herrera.	17 A. Okay.
18	Q. Make sure you speak up.	18 Q. Francis was one of the Soliz sisters that sort
19	A. Okay.	19 of hung out, right?
20	Q. How do you know Mark?	20 A. Yes.
21	A. He's my cousin.	21 Q. Please tell us kind of just what life was like
22	Q. Okay. Who is your mom?	22 during that time.
23	A. Francis Herrera.	23 A. Around that time right there?
24	Q. So your mom was Francis?	24 Q. Yes.
25	A. Yes, sir.	25 A. We pretty much all stayed in the house on
	246	248
1	Q. And who is your sister?	1 Houston Street.
2	A. Monica Herrera.	2 Q. How old do you think you are there?
3	Q. Okay. And that's all, everyone in your little	3 A. I want to say I was about 5.
4	family?	4 Q. About 5?
5	A. Uh-huh, from my mother, yes.	5 A. Uh-huh.
6	Q. Who is your dad?	6 Q. How old are you?
7	A. Pete Herrera.	7 A. Right now? I'm 32.
8	Q. Pete Herrera?	8 Q. So this would have been -- horrible with math.
9	A. Yes, sir.	9 What year were you born?
10	Q. Can you give us sort of a thumbnail of your	10 A. 1980.
11	earliest life with your mom and your dad, I mean?	11 Q. 1980. So this is about '85?
12	A. They were together up until we were 9. And	12 A. Uh-huh.
13	after that, they separated.	13 Q. And then so Mark was born and is about 3 at this
14	Q. Okay. And then what? Is he still in the area?	14 time?
15	Do you --	15 A. Uh-huh.
16	A. Yes. I still have contact with my father.	16 Q. And y'all lived at the Houston house?
17	Q. And do you have any kids?	17 A. Yes, sir.
18	A. Yes, sir, I have four kids.	18 Q. Okay. Please tell us what is it like to live in
19	Q. Four kids?	19 the Houston house, North Houston Street house.
20	A. Uh-huh.	20 A. It was a lot of partying going on. My grandma,
21	Q. Please tell us about them.	21 it was my grandmother's house. She -- she would cook for
22	A. Mariah, she's 12, and Jeremiah, he's -- I'm	22 us and stuff, and but it was a lot of -- on the weekends
23	nervous, y'all. Sorry. He's 7. Isaiah is 5, and Malaya	23 it was like, you know, parties, drinking. Some parents
24	is 1.	24 were sniffing, things like that.
25	Q. And you take care of all of them?	25 Q. Okay.

1	A. Going on. And we pretty much played in the back	249	1	just stayed with Kathryn, my aunt, and then Sharon, and
2	yard, you know, to keep away from the parents, but we		2	then we just bounced around after that because um, my
3	pretty much knew what was going on, you know, so.		3	Aunt Vicky, she pretty much had a lot of our gatherings.
4	Q. You played "keep away" from the parents?		4	She was pretty much the one that holded us together.
5	A. Yeah, like we would play in the back. Either		5	Sorry. (Crying.)
6	they would tell us to go play and while they were		6	She passed away, that was pretty much it.
7	drinking or whatever or while a cookout was going on.		7	We didn't have family gatherings anymore.
8	And we pretty much would be away from them.		8	Q. You -- after your parents split and you started
9	Q. All right. So when you say you played "keep		9	living with other family members, was that in Butler?
10	away", you stayed away from the parents?		10	A. Yes, sir, because Kathryn and Vicky had their
11	A. Right.		11	apartment there.
12	Q. And did you ever see them sniffing?		12	Q. Kathryn and Vicky lived together on the --
13	A. Yes, sir.		13	A. Kathryn had an apartment on top of the -- I mean
14	Q. Where did you see them sniffing?		14	Vicky had apartment on top of the hill on East 13th
15	A. On the front porch.		15	Street.
16	Q. Tell us about that, please. What does that look		16	Q. Showing you what's in evidence already as
17	like? How many are there?		17	Defendant's 46. Do you recognize this here?
18	A. Like there was a lot of us, like, like Bubbles,		18	A. Yes.
19	Daniel, you know, all of us there. And they would be		19	Q. Now, is this where Vicky lived and Kathy?
20	drinking and sniffing. And we would be playing from the		20	A. I want to say.
21	front to the back, you know, like kids do. And we would		21	Q. You said the top of the hill. Is this whole
22	see them sniffing and drinking, and we would just be		22	thing a hill or what?
23	running around.		23	A. You know where the 13th Street is on Chambers,
24	Q. Okay. Who is "them"?		24	Chambers go up the hill, and then 13th Street is right
25	A. Like Freddy Martinez. Like couple of family		25	there in front of the school.
1	members. I don't exactly know who all was there, but I	250	1	Q. Okay.
2	do know I remember seeing --		2	A. The old school building. Right on the corner,
3	Q. Was your mom one of them?		3	I want to say it was probably 1306 East Chambers Street,
4	A. No, sir, but I know that she did sniff, but I --		4	that's where Vicky lived.
5	she wasn't one of them. Like I didn't see with my eyes		5	Q. And then do you think you can pick out on here
6	that she sniffed.		6	where --
7	Q. Was -- was Donna one of them?		7	A. I'm kind of turned around on that one.
8	A. Yes, sir.		8	Q. -- where Donna lived?
9	Q. And how many in this group do you think that'd		9	A. Donna stayed on Waters Street.
10	sit out there and sniff on the porch?		10	Q. And then did Sharon live in here also?
11	A. I want to say Donna. I want to say Freddy, but		11	A. Sharon stayed right next to -- her and Donna had
12	I'm not for sure if he was because there was like a		12	an apartment right next door to each other. Right,
13	family friend that had long hair, and I want to say that		13	that's Waters and Luella.
14	it was Freddy, but I'm not quite sure if my vision, I		14	Q. That's Donna and Sharon's little wing there?
15	mean, you know, like trying to get the picture of seeing		15	A. Right, right.
16	that person.		16	Q. And --
17	Q. So you're like 5 or 6 at this time?		17	A. Which that's the apartment right there.
18	A. Right. So I'm trying to remember.		18	Q. Right. 1702 and 1704?
19	Q. Right. I understand. Well, where did you		19	A. Right.
20	all -- where did you move after the Houston Street?		20	Q. And this here?
21	A. My father and my mother had a place on Warwick,		21	A. Was of Vicky's apartment.
22	a house, and then they also had one on Chestnut. We		22	Q. Right.
23	didn't live on Warwick for -- we might have lived there		23	A. Is that the front of it right there?
24	for a couple years, but then we moved on Chestnut. And		24	Q. Yeah.
25	then after we were 9, they split up. And then we kind of		25	A. Okay.

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1	Q. And so -- so that's where you moved into after	1 Q. Did you say "we couldn't go back there"?
2	your folks split?	2 A. We couldn't. We weren't supposed to. We
3	A. Uh-huh.	3 weren't allowed to go back there.
4	Q. What was -- and do you remember Mark during	4 Q. Why?
5	those days?	5 A. Because it was just like the woods. It was
6	A. Yes.	6 dark. And it was just dangerous, had a lot of glass,
7	Q. Where was Mark at that time?	7 boards, trees. And I don't even know if it's still
8	A. With Donna and Gene at the apartment on Luella	8 there, but, yeah, we couldn't go back there, but that's
9	and Waters Street.	9 where he would be.
10	Q. And Mike was where?	10 Q. So where is Donna when this is going on?
11	A. I want to say he was -- he was there also, I	11 A. In the house.
12	want to say.	12 Q. Did the kids go hang out at Donna's house?
13	Q. Yeah.	13 A. We would be outside most of the time. We
14	A. If not in Mexico, but I think he was because I	14 wouldn't be in the house. Like our thing wasn't in the
15	think he was younger when he was in Mexico, yeah.	15 house. We would be out playing. There was a field there
16	Q. What was it like to be in Butler? I guess	16 that we played or a rock park, sand park. We pretty much
17	that's -- we're talking about like 1985-ish, '86. So	17 stayed outside a lot.
18	what was it like to be in Butler then?	18 Q. Did you -- tell us about Mark during that time.
19	A. Um, we pretty much ran around a lot. We didn't	19 Just tell us, what is Mark like during that time?
20	stay inside a lot. We ran around. We stayed outside a	20 A. Pretty much his own person. Just not a lot of
21	lot.	21 discipline. Gene would try to discipline him for, like,
22	Q. Could you do me a favor and go a little bit	22 Donna. I don't think Donna knew how, but -- I don't
23	closer to the microphone.	23 think Donna knew how to discipline him, but he pretty
24	A. Okay.	24 much would just run. Like I say, he would be on the
25	Q. Now, you took a long pause there. What went	25 train. He would be in the woods. He would stand at the
	254	256
1	through your mind?	1 top of the freeway in the middle. The freeway had, like,
2	A. Seeing my cousin running around The Projects and	2 two big, you know, signs, and he would be standing in the
3	in the woods in the back, seeing him and when he would	3 middle, just standing there. I don't know for what
4	jump on the train and leave and pretty much be gone a	4 reason, but he would.
5	lot. We always looked for him.	5 Q. How old is he when he's doing that?
6	Q. You're talking about Mark?	6 A. 8 or 9.
7	A. Yes, sir.	7 Q. And is it at nighttime? Is it daytime?
8	Q. How old is he when he's doing this?	8 A. Daytime, nighttime. We would always have to go
9	A. I want to say he was probably 8, 7, 8. I want	9 looking for him because he wouldn't come home before dark
10	to say 8 or 9 probably because we were a little bit older	10 or we would have to go looking for him.
11	when we lived up on the Waters. And I say "we" because	11 Q. So this, this is Luella Street. That's that
12	we all pretty much moved around a lot. Like we didn't	12 main, main bridge that goes over the freeway?
13	have a certain specific house we lived in, you know, like	13 A. Is that 35 up and down?
14	my Aunt Vicky's kids did. Like they stayed on 13th	14 Q. Yes.
15	Street. You know, Mark and them stayed on Waters. But	15 A. Okay.
16	we pretty much -- my mom didn't have a permanent place at	16 Q. So is this what you're talking about, he would
17	the time. She had just left my father.	17 stand here on the overpass?
18	Q. Uh-huh.	18 A. But on the opposite side of that right there
19	A. So when I think about Waters Street, I think	19 where your finger was just at, right, the opposite side.
20	about Mark pretty much just running, running the streets	20 There was two big signs. I don't know what they said
21	and running through the woods. And we couldn't go back	21 because I don't remember, but there was two big signs
22	there, but he would always be back there. I don't know	22 that were there, and he would stand there.
23	if it was like a -- now that I'm older -- if it was like	23 Q. What, and lean over the freeway?
24	a comfort zone for him or what, but he -- he would be	24 A. Uh-huh.
25	there. He would be in the woods.	25 Q. Did you ever see him choke himself?

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1 A. Yes, sir.
 2 Q. Tell us about that.
 3 A. At the house on Luella -- I mean on the
 4 apartment on Waters Street, he would just put his hands
 5 around his throat and just -- till he got red and choke
 6 his self.

7 Q. And how old is he when he's doing that?
 8 A. 8 or 9.
 9 Q. How did you react to that?
 10 A. We would call somebody or we would just look at
 11 him and tell him to stop, stop doing that to his self.
 12 And somebody would be coming, he'll stop, and then
 13 he'll -- they leave, he'll do it again, you know. Just
 14 what he did.

15 Q. So he would continuously choke himself?
 16 A. Uh-huh.
 17 Q. Please tell us more about riding the trains.
 18 What do you mean by that?
 19 A. There was a -- well, in the picture there's a
 20 train. Right now I think it's a Amtrak. And the train
 21 used to go by there by that Glass Key liquor store, and
 22 he used to get on there and ride to the north side, just
 23 everywhere pretty much. Sometimes we wouldn't even know
 24 where he was, but we knew that he got on the train
 25 because we seen him go on, or he'll say I'm gonna go ride

1 Q. I'm going to go ahead and talk to you about
 2 Vicky. Can you tell us what was it about Vicky?
 3 (Pause in proceeding.)
 4 A. She...(crying.)
 5 (Pause in proceeding.)
 6 THE COURT: Can you ask a question.
 7 Q. Would you like to come back to it?
 8 A. It's okay.
 9 Q. Okay. When Mark would go riding these trains,
 10 and would he be -- how long would he be gone when he
 11 would go out at night or would he be gone a number of
 12 days?
 13 A. Sometimes he would be gone a day or two or he
 14 would be gone hours. I want to say about a day.
 15 Q. And did Donna ever go look for him?
 16 A. I don't recall. I know that Gene would
 17 sometimes.
 18 Q. I want to talk to you about an incident where --
 19 that happened at Cynthia's house, I think happened at
 20 Cynthia's house, where Donna became like a baby.
 21 A. Yes, sir.
 22 Q. Did that happen at Cynthia's house?
 23 A. Yes, sir, in that house right there, if I'm not
 24 mistaken. Either that or Prospect, because couple
 25 streets down was Prospect.

258 1 the train. And we would think he would be playing, but
 2 he was serious.

3 Q. He would?
 4 A. He would get on, and as the train is going, he
 5 would jump on it and he would ride the train.

6 Q. Did you sniff paint?
 7 A. I have before.
 8 Q. How many times do you think?
 9 A. Twice.

10 Q. And did you -- did you do drugs?
 11 A. I used to smoke marijuana before I had my
 12 daughter, before I had any of my kids.

13 Q. You stopped when you had your kids?
 14 A. When I had my daughter, I knew I couldn't --
 15 Q. Right.
 16 A. -- do that. I knew that would be interfering
 17 with raising her.

18 Q. And now you -- well, you're very religious,
 19 aren't you?

20 A. Yes, sir.
 21 Q. Do you recognize this house at the corner of
 22 Northwest 23rd and Refugio?

23 A. Yes, sir.
 24 Q. Whose house is that?
 25 A. My Aunt Cynthia's house.

260 1 Q. And what is Prospect?
 2 A. Um.
 3 Q. Who lived there?
 4 A. Cynthia.
 5 Q. Cynthia. Okay. So Cynthia had this house at
 6 Northwest Refugio and also the house on --
 7 A. Prospect, yeah.
 8 Q. At different times?
 9 A. Yes.
 10 Q. What happened in that incident?
 11 A. Um, she was high, and she was talking out of
 12 her head, and pretty much came out her clothes naked.
 13 And we seen her running around the house like that.
 14 And I remember seeing her in the bathtub, and they were,
 15 you know, trying to keep us away from it, but we seen.
 16 And she would -- was in the bathtub, you know, splashing
 17 the water like she was a baby. Pretty much just high,
 18 talking out of her head.
 19 Q. And she was high from sniffing paint?
 20 A. Yes, sir.
 21 Q. And was this another deal where everyone was in
 22 the house?
 23 A. Yes.
 24 Q. And was Mark there as well?
 25 A. Yes, sir.

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1 Q. So can you demonstrate for us what she was
2 doing?

3 A. When she was walking around the house, she was,
4 you know, like goo-goo, ga-ga, like a baby, and like
5 running around naked. And I want to say the grownups
6 grabbed her and took her to the restroom so that the kids
7 can be away, you know, to get us away, but we still seen
8 because the restroom door was open. And there was water
9 in the bathtub, and she was in there sucking her thumb,
10 rocking, acting like she was a baby, and splashing water,
11 like she was a baby.

12 Q. And was an ambulance called to come pick her up?

13 A. I don't remember that.

14 Q. Was Mark there to see that?

15 A. I want to say I remember we all were there. Is
16 this house right here Refugio?

17 Q. Uh-huh.

18 A. Just looks different, of course.

19 Q. Yeah.

20 A. But I remember the fence right here.

21 Q. Right. The fence over on this side?

22 A. Yes.

23 Q. Now, on the day that Vicky was killed, what had
24 y'all been doing?

25 A. We were at a park. Not sure if it was Easter.

1 I've given you while this trial has been going on, and
2 you may be dismissed with the bailiff at this time.

3 (Court adjourned.)

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1 I want to say it was Easter, but I know it was some
2 holiday. And we were at the park, and she was there. We
3 were all at the park. And we left the park. Her and her
4 boyfriend were arguing.

5 Q. This same boyfriend had shot her some month
6 before, right?

7 A. Yes, sir.

8 Q. In front of all the kids?

9 A. Uh-huh.

10 Q. Did Mark ever live with you-all with Kathryn?

11 Did he ever live with any of the other aunts besides
12 Donna?

13 A. With Sharon.

14 Q. With Sharon?

15 A. Yeah. Kind of like we all stayed with each
16 other because we always were from either Refugio or
17 Prospect or Chambers or -- so I can't really tell you
18 that we had a steady home, because, like I say, East
19 Chambers was one of the places we would be at or we would
20 be on Waters or it'd just be different places.

21 Q. And Chambers in Butler also?

22 A. Yes, sir.

23 THE COURT: At this time we're going to
24 recess until tomorrow morning at 9. Court will reconvene
25 about 8:45. Please remember all the instructions that

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1 THE STATE OF TEXAS)

2 COUNTY OF JOHNSON)

3 I, Pamela K. Waits, Official Court Reporter
4 in and for the 413th District Court of Johnson County,
5 State of Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in the
9 volume of the Reporter's Record, in the above-styled and
10 numbered cause, all of which occurred in open court or in
11 chambers and were reported by me.

12 I further certify that this Reporter's Record
13 of the proceedings truly and correctly reflects the
14 exhibits, if any, admitted by the respective parties.

15 WITNESS MY OFFICIAL HAND this the 31 day
16 of December 2012.



Pamela K. Waits, Texas CSR #4991
Expiration Date: 12/31/13
Official Court Reporter
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